

In The Matter Of:
Hickman's Egg Farm
Permit No. 140062

Combined Public Meeting and Executive Session
November 7, 2016
Maricopa County Air Pollution Hearing Board

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Phoenix, AZ 85016

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1] Hearing Board was taken on November 7, 2016, commencing at
2] 1:05 p.m. at the offices of the Maricopa County Air
3] Quality Department, 1001 North Central Aveune, Suite 560,
4] Phoenix, Arizona, before LAURA A. ASHBROOK, a Certified
5] Reporter in the State of Arizona.

6]

7] MARICOPA COUNTY AIR POLLUTION HEARING BOARD:

8] SHANE LEONARD, Chairperson
9] District 1

10] LUCAS NARDUCCI,
11] District 2

12] KIM McEACHERN,
13] District 3

14] SINE KERR,
15] District 4

16] BRIAN DAVIDSON, Vice Chair
17] District 5

18] ERIC HISER,
19] Board Attorney

20]

21] For the Petitioner Appellant:

22] DANIEL E. BLACKSON
23] 42211 W. Salome Highway
24] Tonopah, Arizona 85354

25]

26] For the Department of Air Quality:

27] ROBERT SWAN
28] Deputy County Attorney
29] 222 North Central Avenue
30] Suite 1100
31] Phoenix, Arizona

32] P R O C E E D I N G S

Meeting of the Maricopa County Air Pollution

1] CHAIRMAN LEONARD: Folks, I'd like to call
2] this meeting of the Maricopa County Air Pollution Hearing
3] Board together. I'll note the start time as 1:05. As was
4] mentioned earlier, the first agenda item will be to motion
5] into executive session so we can get a little instruction
6] from our folks. I appreciate your deference. Don't go
7] too far because we'll try and get back right about 1:30
8] With that, I will entertain a motion to go
9] into executive session, please.
10] MR. NARDUCCI: Move to go into executive
11] session.
12] MS. KERR: Second.
13] CHAIRMAN LEONARD: All in favor?
14] (All members responded in the affirmative.)
15] CHAIRMAN LEONARD: Any opposed?
16] (There was no response.)
17] CHAIRMAN LEONARD: All right, folks. We're
18] going into executive session. Stay where you're at and
19] we'll kick over into the other room.
20] (Recess taken, 1:07 p.m. to 1:41 p.m.)
21] CHAIRMAN LEONARD: Thank you very much for
22] your patience, folks. I'll entertain a motion to go back
23] into open session, please.
24] MR. NARDUCCI: So moved.

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1] CHAIRMAN LEONARD: Second?
2] MR. DAVIDSON: Second.
3] CHAIRMAN LEONARD: All those in favor?
4] (All members responded in the affirmative.)
5] CHAIRMAN LEONARD: Any opposed?
6] (There was no response.)
7] CHAIRMAN LEONARD: All right. We are back
8] in open session. Okay. Folks, again, thanks for your
9] patience. We appreciate you giving the board an
10] opportunity to kind of run through what we think our
11] process rules are supposed to be today.
12] For purposes, however, of clarification, I
13] know some folks in the audience may not have ever done
14] this before. So what I'd like to do is have Mr. Hiser
15] kind of run you through the process we're going to go
16] through today.
17] One of the things that I want to make sure I
18] point out is that the majority of today's hearing is going
19] to be between Mr. Blackson and the Department. We have,
20] at the end of the hearing, a place for public comment
21] which is where I think some folks are going to want to
22] talk, understanding though that that won't take place as a
23] matter of the hearing.
24] So if you do have something you'd like to
25] say, certainly stay so we can get those comments. That

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1] won't be a part of the actual hearing. That doesn't mean
2] it won't be put into the meeting minutes, so it will be
3] there. I just want to make sure folks understand.
4] So for purposes of Mr. Blackson and purposes
5] of Mr. Swan and the Department, if Mr. Hiser you go ahead
6] and walk us through what the process is going to be. That
7] way, everybody is on the same page, please.
8] MR. HISER: Thank you, Mr. Chairman. This
9] is the second hearing in this matter. In the previous
10] hearing, the Board had decided that the issues that we
11] would be investigating today are the propriety of the
12] procedures that were used in issuance of the minor permit
13] revision and any issue going to the minor permit revision
14] itself.
15] At this hearing, we will start with five
16] minutes per side for opening arguments, that you can make
17] sort of a preview of your case you will be putting on.
18] We'll start with Mr. Blackson as the petitioner appellant
19] who will be followed by Mr. Swan responding on behalf of
20] the Department.
21] We will then go to the petitioner
22] appellant's case which will be Mr. Blackson. He will then
23] be able to put on the testimony. We understand that there
24] will be testimony from himself as a witness and also from
25] an expert. Following each witness' testimony, there will

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1] be an opportunity for cross-examination by the other
2] party.
3] After Mr. Blackson is finished with his
4] case-in-chief and if he feels he wants to reserve time for
5] rebuttal, we may come back to rebuttal. Then we'll go to
6] Mr. Swan. Mr. Swan will be able to put on any witnesses
7] that he chooses to do so. Mr. Blackson will have an
8] opportunity to cross-examine those witnesses.
9] If there is a request for rebuttal, we'll
10] then handle any rebuttal witness testimony that we need to
11] do so and then we will close with, say, ten minutes per
12] party for the closing arguments, because you'll have a
13] little bit more to talk about because there will be
14] evidence and stuff in the record at that point.
15] We would like to hold this hearing to
16] close -- somewhere between the -- 4:30, around that time.
17] So that's roughly about an hour and 20 minutes per party.
18] We will also take a break in the middle of the day to
19] allow people to go out and use the restroom or whatever.
20] If you do need to break during the day, just please go out
21] and try not to make too much noise going through the
22] doors.
23] I believe that is most of the information
24] that we need to have. Just to clarify for the parties,
25] the Board has, once again, asked me to serve in the

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1] capacity of the hearing examiner, so I may be asking you
2] questions for the purpose of expanding the record for the
3] Board's consideration as well.
4] Are there any questions from the parties?
5] With that then, Mr. Chairman, I will turn it back over to
6] you to start the hearing.
7] CHAIRMAN LEONARD: Thank you very much.
8] Just one reminder: We do have a court reporter in the
9] room today so I would ask, as best you can, to kind of
10] look over every once in a while; I will too, in case she
11] gets behind or her fingers start cramping or whatever may
12] be the case, just as a reminder, and then again, if
13] something happens and you need some assistance, just let
14] me know.
15] So with that, Mr. Blackson, the floor is
16] yours for opening statement, please.
17] MR. BLACKSON: Thank you. Chairman Leonard
18] and members of the Board, Maricopa County Air Quality
19] Department alleges that the Department has not developed
20] regulations addressing animal feeding operations emissions
21] from the units covered in the EPA study for two main
22] reasons: one the absence of reliable emissions factors
23] and, two, the federal and state law limit the Department's
24] authority to promulgate regulations regarding animal
25] feeding operations emissions from units in the EPA study.

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<p>1] They also note that the Arizona Department of 2] Environmental Quality has not adopted relevant 3] regulations, and their second reason for not addressing it 4] is that emissions from the Tonopah Egg Ranch poultry 5] operation are fugitive. 6] My pre-hearing disclosure refutes the 7] Department's position that a new source review was not 8] necessary to determine whether or not a Title V or 9] non-Title V permit is appropriate for the Tonopah Egg 10] Ranch operation from this day forward. I understand that 11] the underlying permit is not at issue, and what is at 12] issue is whether a non-Title V permit is still appropriate 13] or whether from this day forward, it should be a Title V 14] permit. 15] Our arguments demonstrate that the 16] Department's decision was arbitrary, unreasonable, 17] unlawful and the technical judgment was invalid, and 18] that's what I need to demonstrate to you, according to 19] your procedures, and I believe that I can do that. The 20] Department's position on this permit action is at odds 21] with their obligation under their EPA delegated authority 22] and Clean Act responsibilities with respect to the Tonopah 23] Egg Ranch permit action that we are here to discuss today. 24] The Department is intentionally limiting the 25] scope of the minor permit modification review by ignoring</p>	<p>1] witness, to demonstrate that a new source review with a 2] minor permit modification should have been done and the 3] new source review pollutants quantified. 4] Expert witness Miss Martin will testify 5] about emissions calculations permitting major stationary 6] sources at the facility. We intend to challenge the 7] Department's position on fugitive emissions and 8] demonstrate that the emissions are non-fugitive. 9] I can only use the plain language of the 10] Clean Air Act of Maricopa County state implementation plan 11] air quality rules and that will be the basis of my 12] argument. Although I've been able to find some legal 13] cases on the internet that support my appeal, I don't have 14] the skills or the ability to find, cite or weave court 15] cases into the legal argument. 16] However, I would like to make a statement 17] about the Chevron USA, Incorporated versus Natural 18] Resources Defense Council. That was a Supreme Court case. 19] It seems to me that the laws, regulations and rules are 20] clear, and interpretation is not necessary. Therefore, 21] the Chevron decision would not apply. 22] I hope by the end of the day you will agree 23] with us that a new source review should have been 24] triggered during the minor permit modification process. 25] Thank you.</p>
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<p>1] stationary sources that are at the facility which would 2] demonstrate to have the potential to emit more than 3] 100 tons per year of new source review pollutants. 4] We will lay the regulatory foundation 5] through the Department's rule showing that the Department 6] has the ability to and the obligation to conduct a new 7] source review. We will show that there are published 8] emission factors that can be used to calculate estimated 9] emissions from poultry operations. We will show that it 10] is no longer -- that there are no longer reasons to ignore 11] stationary sources of the Tonopah Egg Ranch. 12] We are also going to show today that the 13] Department did not follow rules performing a new source 14] review during the minor permit modification process. The 15] Department intentionally limited their review process by 16] ignoring stationary sources that have the potential to 17] emit more than 100 tons per year of new source review 18] pollutants. Department continues to ignore these 19] stationary sources in an arbitrary, capricious way. 20] In August, the Board ruled on the 21] jurisdiction of this hearing. As recent as Friday last 22] week, the Department again made an effort to limit the 23] scope of this hearing to emissions only from the diesels 24] for the emergency generators and the boiler operations. I 25] intend to provide testimony, including myself and expert</p>	<p>1] CHAIRMAN LEONARD: Thank you. Mr. Blackson. 2] Mr. Swan. 3] MR. SWAN: Mr. Chairman, members of the 4] Board, in the Department's view -- in the Department's 5] view, this is a very simple case that involves an 6] application for a minor permit revision to add boilers and 7] generators to an existing operation that already had been 8] granted an air quality permit. So, again, we're looking 9] at an application for a minor permit revision to an 10] existing permit. 11] The Board's own manual at Section 3.22 12] states that under these circumstances, the petitioner 13] certainly has the right to challenge the Department 14] directors' action in approving that minor permit revision, 15] but the petitioner has the high burden to prove that in 16] doing so, the Department's decision to issue the revision 17] falls into at least one of the following four categories: 18] It was arbitrary; it was unreasonable; it was unlawful or 19] it was based upon a technical judgment that was clearly 20] invalid, and the petitioner must -- you must find that one 21] of those four categories of omissions is applicable here. 22] It's our argument that you must find that in order to 23] overturn and not confirm the Department directors' 24] decision to issue the permit. 25] Here, the Department's decision to issue the</p>

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1] minor permit revision should be confirmed under all of
2] those. We met all of those standards and others. The
3] evidence we will present will confirm that the Department
4] applied all proper permitting standards and processes.
5] At the conclusion of the evidence, the
6] Department will ask the Board to approve the Department's
7] decision to issue the minor permit modification. Thank
8] you.
9] CHAIRMAN LEONARD: Thank you, Mr. Swan. All
10] right. Mr. Blackson, however, you would like to proceed,
11] whether it's you first or you'd like your expert witness
12] to proceed.
13] MR. BLACKSON: What I would like to do first
14] is Mr. Swan and I agreed that all of the exhibits that
15] have been provided in both of our pre-hearing disclosures
16] be accepted by the Board as exhibits. So I would like to
17] make that motion.
18] CHAIRMAN LEONARD: Mr. Swan, are you okay
19] with that?
20] MR. SWAN: The Department agrees, yes.
21] CHAIRMAN LEONARD: Thank you, gentlemen, for
22] doing that. We appreciate that. So we'll note that for
23] the record, and thank you.
24] Mr. Hiser, I apologize. Sometimes I can be
25] a little too informal. We need to admit those as part of

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1] the hearing. We will admit those.
2] MR. BLACKSON: With that, I would also like
3] to make a motion to submit some regulatory rules for the
4] board to consider also. We've talked -- and it's the
5] understanding that the old version of the county rules
6] have been used to review this permit. So with that, I
7] would move that Maricopa County Rules 100, 200, 220, 241
8] and if, Mr. Swan would agree, also 41 CFR 165 which I
9] believe the county has referenced as a legal citation.
10] MR. SWAN: We have no problem with any of
11] those being admitted.
12] MR. HISER: I'd just like to clarify whether
13] these are the current rules or these are historic rules?
14] MR. BLACKSON: My understanding -- I have
15] both, but my understanding is they are the historic rules.
16] MR. HISER: Historic begs the question
17] effective as of what date, just so I know what rules we're
18] talking about?
19] MR. SWAN: I understand from my colleague
20] Mr. Sumner, who is head of the permitting division, that
21] all four of those rules were updated effectively --
22] effective as of February 2016.
23] MR. HISER: Okay. So these would be the
24] rules in effect in the 2014 time frame as previewed prior
25] to the revision of Rule 16. Thank you.

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1] MR. BLACKSON: I do have copies.
2] MR. HISER: Copies would be appreciated.
3] Most certainly that was going to be my next question, is
4] if you had copies. And just for the record, the CFR
5] reference would be 40 CFR part 51.165.
6] MR. SWAN: In lieu of the citation he gave?
7] MR. HISER: That's the one I think he
8] intended but he transposed a couple of numbers.
9] MR. BLACKSON: I did. I apologize.
10] CHAIRMAN LEONARD: Okay. If both parties
11] are in agreement, I will accept those as submitted.
12] MR. BLACKSON: Okay. I haven't done this
13] before, but I would like to be able to present the case.
14] So I would call myself as a witness. Is that proper?
15] MR. HISER: So, Mr. Blackson, if you will
16] raise your right arm.
17] DANIEL E. BLACKSON,
18] a witness herein, having been first duly sworn by the
19] Certified Reporter to speak the truth and nothing but the
20] truth, was examined and testified as follows:
21] MR. HISER: Thank you. You may proceed.
22] CHAIRMAN LEONARD: Also, so that we have one
23] point of focus, if you need to get back up and get your
24] information, that's fine, but, again, because of the court
25] reporter, if you can make sure every once in a while we'll

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1] take a breath. You and I will be doing this together, so
2] just let me know if something comes up that seems a little
3] funny, all right? Thank you, sir.
4] MR. HISER: And for the benefit of the court
5] reporter, if you could start by stating your name and
6] spelling it and your address.
7] MR. BLACKSON: My name is Daniel E.
8] Blackson. D-A-N-I-E-L, E. B-L-A-C-K-S-O-N. My address
9] is 42211 West Salome Highway, Tonopah, Arizona, 85354.
10] So I have some new information that I would
11] like to add, and I have not done this before, so if I
12] drift out of the bounds, please let me know, but I would
13] like to talk about about the rule process some and also at
14] the core of this, our fugitive, non-fugitive emissions,
15] and I would like to be able to state a position on that.
16] So if we could start with Rule 100, I
17] believe there's some important definitions in Rule 100.
18] So we'll have the whole version and I would first like to
19] point out the definition of a building and I'm turning to
20] the -- it's in alphabetical order and it can be found on
21] page 12, and I think this definition will be important as
22] we talk about fugitive and non-fugitive emissions.
23] So 200.26, "Building, Structure, Facility
24] and Installation. All the pollutant emitting equipment
25] and activities that belong to the same industry grouping

<p style="text-align: right;">Page 17</p> <p>1] that are located on one or more contiguous or adjacent 2] properties and that are under the control of the same 3] person or persons under common control except the 4] activities of any vessel. Pollutant-emitting activities 5] shall be considered as part of the industrial grouping if 6] they belong to the same major group as described in the 7] Standard Industrial Classification Manual, 1987." 8] I would also like to read the fugitive 9] emissions definition. Again, it's alphabetical and it 10] would be found on page 17. 11] "Fugitive emission. Any emission which 12] could not reasonably pass through a stack, chimney, vent, 13] or other functionally equivalent opening." 14] And then there's also a definition for major 15] source, and that's number 60 on page 19. "A major source 16] as defined in Rule 240, permits for new major sources and 17] modifications to existing major sources of these rules." 18] B talks about hazards, air pollutants would 19] be relevant to this, but C goes on to say at the bottom of 20] the page, "A major stationary source, as defined in 21] Section 302, definitions of the act, that directly emits 22] or has the potential to emit 100 tons per year or more of 23] any air pollutant, including any major source of fugitive 24] emissions of any such pollutant." 25] And I would like to stop at this point and</p>	<p style="text-align: right;">Page 19</p> <p>1] I believe we'll be talking about sources so 2] that definition is worth going through. Source is on 3] page 28 at the very bottom. "Source: Any building, 4] structure, facility or installation that may cause or 5] contribute to air pollution." 6] And then with that, there's also a 7] definition of a stationary source. This is on page 29. 8] "Any source that operates at a fixed location and that 9] emits or generates regulated air pollutants." 10] So I would like to say that the Clean Air 11] Act does not have an exemption for animal feeding 12] operations, and also, when you look at the county rules, 13] rules 200, 210, 220, 240, 241, they describe the 14] permitting process of all sources. Those rules do not 15] have an exemption for animal feeding operations. In fact, 16] if you look at Rule 100, it does not even have a 17] definition of an animal feeding operation. 18] Part of my appeal was issues with the permit 19] application for boilers and the source of fuel from 20] boilers. That got sorted out eventually through an e-mail 21] note from Robert Palin to the Department on May 10th, 2016 22] and I would like to motion to enter that record -- to make 23] that record an exhibit. 24] CHAIRMAN LEONARD: Mr. Swan? 25] MR. SWAN: I think it's already deemed</p>
<p style="text-align: right;">Page 18</p> <p>1] make a statement that that's fugitive emissions here that 2] have to be quantified, so somewhere in the process, even 3] if the emissions from the hen houses are fugitive, they 4] should have at least been calculated to determine whether 5] this is a major source or major stationary source. 6] "The fugitive emissions of a stationary 7] source shall not be considered in determining whether it's 8] a major stationary source for the purpose of 9] Section 302(j) of the act unless the source belongs to one 10] of the following categories," and then this is the list of 11] categorical stationary sources that are found in the act. 12] I don't think there is a need to read through those. 13] There's an important definition 14] on quantifiable at the bottom of page 24. "Quantifiable: 15] With respect to emissions, including the emissions 16] involved in equivalent emission limits and emission 17] trades, capable of being measured or otherwise determined 18] in terms of quantity and assessed in terms of character. 19] Quantification may be based on emission factors, stack 20] tests, monitored values, operating rates and averaging 21] times, materials used in a process or production, modeling 22] or other reasonable measurement practices." 23] So I believe what this is saying is that 24] emissions can be quantified and you're not limited to 25] using AP-42 in order to quantify those emissions.</p>	<p style="text-align: right;">Page 20</p> <p>1] admitted so -- 2] MR. BLACKSON: Oh, it was? 3] MR. SWAN: Was it in the disclosure? I'm 4] assuming it was. 5] CHAIRMAN LEONARD: Actually, I was going 6] to -- I'm pretty sure we saw that as a part of your 7] submittal. If it was something different than that, 8] then -- 9] MR. BLACKSON: No, it's not. I apologize. 10] I just didn't know everything would be accepted. 11] CHAIRMAN LEONARD: No apologies necessary. 12] You're good. Thank you. 13] MR. BLACKSON: Do we have a copy of that 14] that I can read from? 15] It's Exhibit 33. So in this e-mail there's 16] a question asked about boilers and the source of fuel -- 17] I'm sorry -- about the boilers and the existence of a 18] propane tank, and Mr. Fallon or Falin, maybe is how he 19] said his name, came back and responded that there are two 20] propane tanks on-site, each of them a thousand gallons 21] that fuel the boilers themselves. That resolved that 22] issue and the tanks were declared to be insignificant. So 23] that resolved the issue. 24] But as I looked through the records, what I 25] saw is that on the technical support document, it</p>

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1] actually -- the final one was actually dated as prepared
2] November 30th, electronically signed on February 17th. So
3] I am puzzled here how you can receive information in May
4] and it get recorded in a document that you have considered
5] to be final in February. So I'm a little bit -- I guess
6] question how the county can do that, and that goes back to
7] is this type of thing arbitrary? Maybe there's no TSD out
8] there that's not been provided that's dated differently or
9] is that an illegal type thing?
10] I know as environmental manager and
11] operations manager, if we were to do records required by a
12] permit or a regulation, if this activity happened, if this
13] truly is what happened, that would be pretty egregious and
14] that person might even get terminated back-dating some
15] information into an official record. So I -- so I
16] would -- if there's something more current than that, I
17] would really appreciate if the county would volunteer that
18] up, and it does go back to the processing of the
19] application and how that's being handled.
20] And then I also came across another concern
21] regarding the processing of the permit and -- well, let me
22] back up. I kind of got ahead of myself.
23] So the hen houses, I believe, from what we
24] read here are definitely stationary sources and they do
25] emit regulated air pollutants that would be PM-10, PM-2.5

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1] and VOC's. The process waste water surface impoundment
2] ponds are stationary sources also, and in the TSD, the
3] Department called them structural. I'll mention now that
4] I believe that there's also VOC emissions from that, and
5] we will talk about that in a little bit.
6] I would also mention that the definition of
7] stationary sources also found in 40 CFR 51.165, it really
8] reads the same as what the county has but it's a little
9] bit updated. "Stationary source means any building,
10] structure, facility, installation which emits or may emit
11] a regulated pollutant, and the regulated -- the PM-10, the
12] PM-2.5 and the volatile organic compounds are resource
13] review pollutants."
14] Also in the Code of Federal Regulation, it
15] does give a definition of building structure -- of a
16] building, structure, facility and installation, and that
17] definition reads, "Building, structure, facility,
18] installation means all of the pollutant-emitting
19] activities as it belongs to the same industrial grouping,
20] are located at one or more contiguous or adjacent
21] properties and are under the control of the same person or
22] persons under common control, except the activities of any
23] vessel pollutant emitting activities, shall be considered
24] as part of the same industrial grouping; they belong to
25] the same major group, for example, which have the same two

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1] digit codes as described in the standard industrial
2] classification manual," and then it goes on to kind of say
3] how that was amended. So, again, the hen houses are
4] buildings and the process waste water surface impoundments
5] are structures and the TSD does recognize them as
6] structures.
7] The regulated air pollutants from these
8] sources have not been quantified. If you look at the
9] permit application, that applicant left section Z-M part
10] of the minor permit modification application blank but
11] they do appear on the TSD calculations, and I guess I
12] could stop at this point if we want to actually look at
13] those documents.
14] CHAIRMAN LEONARD: Mr. Blackson, if you'd
15] like us to, we can review that if you want. If not, again
16] just, as a reminder, we have all the information as you
17] submitted and we've accepted it into record. If you're
18] saying you'd like to point that out, that's just fine.
19] MR. BLACKSON: Thank you. Regarding the
20] waste water ponds, in the TSD, the ponds are mentioned and
21] that's on page seven in the comments and it states none of
22] the chemicals containing VOC or HAPs but there's evidence
23] in the ADAQ determination of applicability of other
24] chemicals used in that building, and those chemicals,
25] other than egg washing, do contain VOC's such as chemicals

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1] to clean the floor and probably the walls, and, also, the
2] TSD was not comprehensive in its analysis and it didn't
3] look at feces and urine, broken egg matter that would be
4] on those eggs. That's why they're being washed. So all
5] of that matter then would be carried with it through the
6] wash water into these ponds and, of course, the biological
7] activity still continues in those ponds.
8] There's also a matter with the actual permit
9] application itself, and there actually may be a third
10] application that predates the two that we have, and I
11] would like to try and clear that up if possible. And in
12] going through my records request, there was an e-mail note
13] between the permitting supervisor and I believe the
14] permitting engineer that indicated that the original
15] permit application did not have the boilers. So I would
16] move to include -- and you have not seen this -- include
17] that e-mail and the attachment into the record as an
18] exhibit.
19] MR. HISER: Mr. Swan, was that included in
20] what you were knowing you were admitting?
21] MR. SWAN: Did Mr. Blackson disclose it?
22] MR. BLACKSON: I did not because I did not
23] find it until Saturday night.
24] MR. HISER: Then Mr. Blackson you will need
25] to present a copy of that to Mr. Swan.

<p style="text-align: right;">Page 25</p> <p>1] MR. SWAN: We'll need to review it. I was 2] assuming it was part of your disclosure statement. The 3] Department does not object to the admission of this 4] document. It's a little unclear. There's green, red and 5] blue. 6] CHAIRMAN LEONARD: For the court reporter's 7] benefit, Mr. Swan was asking if Mr. Blackson might 8] describe what the different colors in the proposed e-mail 9] exhibit mean. 10] MR. BLACKSON: Yes. If you look at the 11] e-mail, the cover e-mail on the document, that explains 12] what the colors are. So there could be an explanation. 13] It just looks like there was another application. 14] MR. SWAN: Again, the Department does not 15] object to introduction of this piece of evidence, although 16] we want to make it clear that the various colors were not 17] applied by the Department. I assume they were applied by 18] Mr. Blackson or somebody on his team. You found them that 19] way? 20] MR. BLACKSON: Yes. If you look at the 21] e-mail, embedded in the e-mail it says, "Todd, the 22] attached document has been revised per your 23] input/suggestion (in red)." 24] MR. SWAN: Okay. 25] MR. BLACKSON: Revised sections --</p>	<p style="text-align: right;">Page 27</p> <p>1] On page 20 and the section 405.2, minor 2] permit revisions. "Minor permit revision procedures shall 3] used for a change that triggers a new applicable 4] requirement", and then it has steps one, two, three and 5] then, "Minor permit revision procedures shall be used for 6] a change that increases operating hours or rates of 7] production", and, "The minor permit revision procedures 8] shall be used for a change in fuel." 9] So on to the next page then, it continues to 10] explain the procedures that will be used for a change that 11] results in emissions subject to monitoring, record 12] keeping. "E. Minor permit revision procedures shall be 13] used for a change that decreases emissions. Minor permit 14] revision procedures shall be used for a change that 15] replaces an item -- " but also complementing this is 16] Rule 200, permit requirements. So Rule 220 has some 17] specifics and Rule 200 also talks about the change. 18] I believe actually I got a little confused 19] with the different rules so the numbering is -- caused me 20] a little bit of a problem here, but I think I want to go 21] back to Rule 220, section 300 and if you look on 22] page four, it's got the permit application processing 23] procedures, and in these procedures, there is a standard 24] application form and required information, 301.1. Second 25] step, permit application, and a compliance plan; that</p>
<p style="text-align: right;">Page 26</p> <p>1] MR. SWAN: Okay. We're satisfied. 2] CHAIRMAN LEONARD: Okay. We'll introduce 3] that. Sorry. I'm used to being on your side of the 4] table. My apologies. We'll admit that, please. 5] MR. BLACKSON: And I would like to make a 6] point then that goes back to the Department's actions on, 7] you know, was that arbitrary? What about the technical 8] decision on that? Where is that other -- that other 9] application? And hopefully, it has not been swept away 10] somewhere where it can't be found, because I think an 11] important point on that is that a similar facility 12] received the notice of violation, but the Department chose 13] not to issue a violation to the Tonopah Egg Ranch for the 14] same issue of operating boilers without permits. 15] What I would like to do now is just briefly 16] mention the non-Title V permit -- minor permit 17] modification process. So if you look at Rule 220, there 18] is a section in this rule -- and I apologize. I really 19] had gone through the revised rules to do this testimony 20] and not so much the older rules. I believe it will be 21] section 405, permit revision procedures and then if you go 22] on to 405.3, non-minor permit revisions is kind of what 23] we're talking about and that's on page 21. So I 24] apologize. This was not a non-minor; this was a minor 25] permit revision.</p>	<p style="text-align: right;">Page 28</p> <p>1] would be on page five, a timely permit application also, 2] and duty to supplement or correct application, action on 3] application and then that's the process the agency 4] follows. 5] I would like to point out a couple of 6] particular steps, and on page six, on 301.4, step C, it's 7] kind of towards the top, "To be complete, an application 8] for a new permit or a notification of a permit revision 9] shall contain an assessment of the applicability of the 10] requirements established under rule --" let's go to B 11] right above it, very top page. "To be complete, an 12] application for a new permit or a notification of a permit 13] revision shall contain an assessment of the applicability 14] of the requirements of Rule 241, permits for new sources 15] and modifications to existing sources of these rules and 16] shall comply with all applicable requirements of Rule 241, 17] permits for new sources and modifications to existing 18] sources of these rules." 19] Now, through my records request, that 20] assessment has not been provided. However, if you look 21] down, the control officer has a lot of leeway on minor 22] permit modifications, and if we go on down to F, "The 23] completeness determination shall not apply to revisions 24] processed through the minor permit revision process." 25] So it would be, I think, pretty arbitrary</p>

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1] not to require the assessment of Rule 241 and weigh that
2] requirement and allow the minor permit modification to be
3] processed. Maybe, maybe not the control officer has the
4] ability to do that. I would hope no; it's pretty
5] important, but if we look at the -- there's a checklist
6] that is done on minor permit modifications, and that
7] actually is part of the exhibit that the county has
8] provided at the end of the TSD, and on that checklist, it
9] does not talk about an assessment of the applicability of
10] the requirements of Rule 241, permits for new sources and
11] modifications to existing sources. So as near as I can
12] determine from trying to follow this process, that
13] assessment has not been done.
14] If we then go to Rule 200, it talks about
15] standards for applications, and this is on page nine.
16] "All permit applications shall be filed in the manner and
17] form prescribed by the control officer. The application
18] shall contain all the information necessary to enable the
19] control officer to make the determination to grant or to
20] deny a permit or permit revision which shall contain such
21] terms and conditions as the control officer deems
22] necessary to assure a source's compliance with the
23] requirements of these rules. The issuance of any permit
24] or permit revision shall not relieve the owner or operator
25] from compliance with any federal laws, Arizona laws or

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1] these rules, nor does any other law, regulation or permit
2] relieve the owner or operator from obtaining a permit or
3] permit revision required under these rules."
4] Again, it does not -- there is no exemption
5] for animal feeding operations. So the rules are very
6] specific, and hopefully the county would have followed
7] these rules that the hen houses are stationary sources and
8] should be permitted as such or at least appear on the
9] application as a stationary source for the county's
10] valuation.
11] MR. HISER: Although, Mr. Blackson, if you
12] look at the paragraph above that, you will see that there
13] is a section entitled exemptions that says,
14] "Notwithstanding these rules, the following sources shall
15] not require a permit unless the source is a major source
16] or unless operation without a permit would result in a
17] violation of the act", and then under Section 308.3, it
18] says, "Agricultural equipment used in normal farm
19] operations, for the purposes of this rule, does not
20] include equipment that will be classified as a source that
21] would require a permit under Title V of the act or would
22] be subject to a standard under 40 CFR parts 60 or 61."
23] Do you agree?
24] MR. BLACKSON: It does say that; I agree,
25] but --

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1] MR. HISER: So is it then -- are you going
2] to be demonstrating to the Board then this is a facility
3] that you believe should be classified as a major source
4] under Title V of the act?
5] MR. BLACKSON: I believe I'm restricted to
6] talk about the minor permit modification.
7] MR. HISER: But the minor permit revision is
8] at a source that would or would not be subject to Title V.
9] I guess that's my question.
10] MR. BLACKSON: I believe in my pre-hearing
11] disclosure with my calculations, I demonstrated that, and
12] I believe that our expert will also demonstrate that, but
13] I would like to point out that this says agricultural
14] equipment, not agricultural stationary sources.
15] MR. HISER: So your testimony is there is a
16] difference between equipment and stationary sources?
17] MR. BLACKSON: Yes, there is a difference.
18] For example, agricultural equipment could be a tractor,
19] and I believe there's some references in Arizona Revised
20] Statutes that do talk about that.
21] MR. HISER: Just in the interest of your time
22] management, you're about halfway through your allotted
23] hour and a half.
24] MR. BLACKSON: Then I think what I'll do is
25] I will skip ahead, and I do have more to say, but I would

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1] like to talk about the fugitive, non-fugitive. And I
2] would also ask for the Board's indulgence. This is a
3] pretty important issue and setting a time element on this
4] may be difficult. You may not get all the information
5] that you really need to make a decision at the end of the
6] day.
7] So fugitive, non-fugitive does seem to be at
8] the heart of this and there is a definition that we would
9] find in the 40 CFR or the county rules. "Fugitive
10] emissions means those emissions which could not reasonably
11] pass through a stack, chimney vent or other functionally
12] equivalent opening."
13] Well, the hen houses which are stationary
14] sources does have an opening. It is a building. It's got
15] a roof; it's got three sides and one side to the east is
16] open and they have actually reduced that opening a little
17] bit by putting some fabric up there, so that opening is a
18] vent. So all of the emissions coming out of that building
19] are passing through a vent or if you think maybe that
20] opening is too large for some reason to call it a vent,
21] but it's a vent, how much would you shrink it down to some
22] arbitrary definition of what a vent is or what a vent
23] isn't? But, of course, you can always go back and say
24] that that opening in that building, large or small, is a
25] functionally equivalent opening and it exhausts new source

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1] review regulated pollutants from that building.
2] So since NSR pollutants pass through a vent
3] into the ambient atmosphere, that causes those emissions
4] to be non-fugitive, and I believe that the EPA has
5] actually even taken a position on that.
6] If we look at the Buckeye Farms egg-laying
7] poultry operations, the EPA clearly considered those hen
8] houses to be a building and a vent when they issued the
9] consent agreement to Buckeye Farms.
10] I would also like to touch base quickly
11] about ARS 49.457 and this talks about best management
12] practices, and there is a definition of a regulated area
13] in there at the very bottom of the statute and it does
14] talk about a regulated area has to be an area A or it has
15] to be in a non-attainment area, and I would like to
16] introduce an e-mail that the permitting supervisor also
17] agreed that the Tonopah facility is not in the regulated
18] area and he had a map on that e-mail note. It may not be
19] attached, but for the sake of time, I think I'll just move
20] forward, and if you're not in a regulated area, then you
21] don't have a regulated agriculture activity.
22] MR. SWAN: Is that document included as an
23] attachment to your disclosure statement or are we reading
24] it for the first time? What is the answer?
25] MR. BLACKSON: The answer is the map below

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1] showing PM-10 non-attainment area. Tonopah facility falls
2] outside these areas and therefore does not appear to
3] qualify for coverage under Ag BMP. I've been supporting
4] that position. I believe it's very clear in the
5] regulations if the legislature wanted the BMP's to be
6] statewide, they would not have defined the area as such,
7] the regulated area.
8] CHAIRMAN LEONARD: Mr. Blackson, I'm sorry
9] to interrupt. It won't detract from your time. The
10] question I think was whether the e-mail you're discussing
11] was something that was included in the initial submittals
12] or if this is new, like the previous e-mail was?
13] MR. BLACKSON: I'm sorry. It is new and I
14] would like to motion to -- oh, I'm sorry it was. It was,
15] but just to make sure, I would like to pass it out.
16] MR. SWAN: We have no objection to the
17] introduction of that evidence.
18] CHAIRMAN LEONARD: The e-mail will be
19] admitted then.
20] MR. BLACKSON: With that, I think it would
21] be best to conclude my testimony.
22] CHAIRMAN LEONARD: Mr. Swan, do you have any
23] questions of Mr. Blackson?
24] MR. SWAN: I have none, sir.
25] CHAIRMAN LEONARD: All right.

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1] MR. BLACKSON: Thank you.
2] CHAIRMAN LEONARD: Mr. Blackson, are you
3] calling another witness?
4] MR. BLACKSON: Yes, I would like to, yes. I
5] would like to call a witness, Kathy Martin, to be a
6] technical witness. I would -- there's some information I
7] have about her previous testimony and deposition history
8] and a resume type of information to validate that she's an
9] expert witness.
10] MR. HISER: Mr. Swan, do you have any
11] objection if this witness is an expert?
12] MR. SWAN: No, I do not.
13] MR. HISER: Miss Martin, if you'll take the
14] witness stand.
15] MR. HISER: Miss Martin, I'd ask you state
16] your name, please, for the record.
17] THE WITNESS: My name is Kathy Jean Martin
18] K-A-T-H-Y, J-E-A-N, M-A-R-T-I-N.
19] MR. HISER: Miss Martin
20] KATHY JEAN MARTIN,
21] a witness herein, having been first duly sworn by the
22] Certified Reporter to speak the truth and nothing but the
23] truth, was examined and testified as follows:
24]
25]

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1] EXAMINATION
2] BY MR. BLACKSON:
3] Q. Miss Martin, are you familiar with the matters
4] before the Board today?
5] A. Yes.
6] Q. And could you describe how you prepared today to
7] testify?
8] A. Clearly, you have almost a half a foot of
9] information in front of you. I have been working with Dan
10] Blackson off and on getting prepared for this hearing
11] today, and so I have read the Maricopa County regulations,
12] the rules, right, 100, 200, such that you've been looking
13] at already, some of the applicable Clean Air Act
14] requirements under the 40 CFR, as you have incorporated
15] them by reference in your own rules.
16] I have looked at some filings by the
17] Maricopa County Board with respect to non-attainment for
18] ozone, some of the history of whether or not you've had
19] attainment for eight-hour ozone, how you lost it and now
20] you're in a moderate attainment zone, for kind of getting
21] a feel for what's going on in this particular part of the
22] country.
23] I have read the materials and e-mails and
24] copies of permits, permit application, management plan,
25] the aquifer protection plan, et cetera, all related to the

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1] Hickman Tonopah egg laying facility that Mr. Blackson
2] acquired through a public information request, and he
3] forwarded a lot of those documents on to me for review.
4] I've looked at the pre-hearing disclosure
5] statements by both Mr. Blackson and by the county and the
6] exhibits in the books. I have looked at some of the
7] preliminary jurisdiction things and stuff like that, so
8] hopefully, almost that entire stack that you have in front
9] of you as well, in order to be here today, that relate to
10] this particular place, and then, of course, I did some
11] outside research just on air quality and egg laying
12] facilities that is the -- a lot of the research that has
13] been done through the EPA, the National Ambient Air
14] Quality Emission Compliance Program, the NAEMS program.
15] I also -- because I've been working on CAFO
16] issues since 1997, I have actually been following
17] emissions and studies for I think it's almost 20 years,
18] 21 years in all parts of the country. I've worked in 21
19] states in the United States with respect to CAFO issues.
20] So I'm also familiar with quality issues with respect to
21] CAFO's, including egg layers, and I've been involved in
22] some litigation on egg-laying facilities in California.
23] So I am aware of what some of your
24] neighboring air quality divisions are doing with respect
25] to air permits for egg-laying facilities and looking at

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1] the peer-reviewed or at least the published research that
2] has come out on various egg-laying facilities in Indiana,
3] Iowa, Ohio.
4] Q. And have you visited the Tonopah Egg Ranch?
5] A. Yes, I have. I've been around it twice.
6] Q. And did you identify any -- what stationary
7] sources have you identified from that visit, from your
8] review?
9] A. Right. Just to be clear when -- even though you
10] have my CV, very quickly, I worked for the State of
11] Oklahoma in the small business assistance program related
12] to the Clean Air Act amendments, and so in my tenure with
13] the Oklahoma Department of Environmental Quality, I
14] received training on the Clean Air Act Title V permit
15] writers training program. Also, they have a -- had
16] various training programs through the University of Texas
17] at Arlington on identifying stationary sources, and then
18] also, on each type of best available control technology,
19] such as bag houses, wet scrubbers, dry scrubbers, how to
20] do stack testing, et cetera, and that was all part of my
21] job working in the small business assistance program,
22] helping both small business and larger companies in
23] Oklahoma understanding the requirements under the Clean
24] Air Act amendment of 1990. So that was actually my job
25] for three years in Oklahoma.

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1] And so from that, I'm going to say that I
2] identified some stationary sources. I just wanted to let
3] you know it just didn't come out of nowhere. It came from
4] some background and work knowledge.
5] So when you're looking at a facility, you're
6] going to identify all the sources, and then once you've
7] identified the sources, try to see what their potential to
8] emit is, whether they're operating 24/7, whether they have
9] some sort of synthetic bottleneck where you only have one
10] shift versus three shifts, et cetera, and you get all of
11] that lined out and start trying to estimate emissions from
12] whatever actual data or emission factors or whatever. So
13] then you have a full picture of what we're calling an air
14] assessment or now it's going to be called a new source
15] review.
16] So the stationary sources that I identified,
17] of course, would be all of the barns associated with the
18] egg-laying operation, all of the lagoons associated with
19] the manure or waste water storage, and then, of course,
20] you have your feed delivery system, your generators and
21] the boilers that the county has identified. Of course, I
22] had to identify these from the street but if, you know, we
23] had a site inspection, we may find something else,
24] correct.
25] Q. What are the types of air pollutants that would

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1] be emitted from the poultry operation at the Tonopah Egg
2] Ranch?
3] A. Right, and I believe Dan provided some exhibits
4] on -- some research on typical air pollutants from poultry
5] operations and from egg-laying operations and, of course,
6] I have done similar reading and research in the last 10,
7] 15 years but you're looking at basic categories.
8] For today's hearing, we're going to be
9] looking at particulates and volatile organic compounds.
10] The particulates are from feed dust, dander, feathers, the
11] animals just in their movement producing particulate
12] matter, and the particulate matter that we're concerned
13] about is PM-10 which is actually very, very small, not
14] really visible to the naked eye but it's respirable and
15] PM-2.5, which is even more respirable; then the volatile
16] organic compounds which those come from the degradation
17] from the manure, the feces and urine which all comes from
18] the same place in a bird, but that fecal material, as it
19] degrades, it's going to release volatile organic
20] compounds, right?
21] As proteins degrade, that's the natural
22] course and then there is also, of course, ammonia and that
23] is from the degradation of the urease part of fecal
24] material. It is a very, very large amount from poultry.
25] That's a big part of their emissions, and then other

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1] things that are normal like carbon monoxide from their
2] breathing, methanes and other things that are not going to
3] be spoken of here today. So we're looking at particulates
4] and VOC's today.
5] Q. Is there anything else you would like to comment
6] about the stationary sources and pollutants?
7] A. No.
8] Q. So let's talk about emissions. What is an
9] emission factor?
10] A. Okay. An emission factor is some kind of a
11] number you can multiply by, like, in this case, with an
12] animal feeding operation, the number of birds at the
13] facility. So the emission factor that we're looking at
14] here today would be pounds of that pollutant per bird per
15] day or per year. There's other kinds of emission factors
16] that could be a function of ventilation rate, et cetera,
17] but we are just looking at some simple emission factors to
18] show that there's definitely many ways at the facility to
19] trigger 110 per year criteria pollutant in order to have
20] further investigation.
21] Q. How can emission factors be derived? And perhaps
22] as part of that, you'd like to talk about the potential to
23] emit, a guide for small business which should have been
24] provided in everybody's packet and this would be 13 --
25] page 13 to maybe 16?

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1] A. And this is the SBAP the EPA published in
2] October 1998 and what this Small Business Assistance
3] Program was supposed to do is provide an interpretation of
4] the Clean Air Act for small business people, right. This
5] is not a policy wonk document. This is supposed to be,
6] you know, putting it into regular people's terms so small
7] business owners can understand whether or not they need to
8] get a permit, and one of the great things about it is in
9] this document on page 13 it says how do I determine if I
10] have a potential to emit? How do I figure out, you know,
11] what my emissions are? And so the EPA gives the hierarchy
12] of data, which is basically a science or engineering
13] function, the hierarchy of data in any permitting program.
14] Also, the air quality permitting program would be to look
15] at measured data from the existing site, correct, or
16] measured data from a similar site, emission factors based
17] on actual sites, okay, that isn't in a book; that's just
18] applied, whatever, then some modeling and then, of course,
19] there's always lesser guesses, okay.
20] So what we are trying to say today is that
21] the county was claiming that there was -- there was no
22] defined emission factors by the EPA. They were doing a
23] large nationwide study. It was very extensive. They went
24] to great pains through the National Compliance Order to
25] get people to sign up and to get some sort of amnesty

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1] during the study in order to determine a final emission
2] factor for animal feeding operations. There would be
3] several different factors, one for each type of species
4] that once that number was determined, then every single
5] CAFO or animal feeding operation in United States, every
6] last one of them had to look at that number and calculate
7] the emissions. There would be no exceptions. Okay. So
8] that's when the study is finally done and the emission
9] factors are published.
10] Where we're at right now, the study has been
11] done. There are publications of the emission factors
12] developed by Dr. Heber out of Purdue with respect to the
13] poultry emissions. It was a robust study. I believe when
14] you look at the exhibit provided by the county, there's
15] nearly 400 pages that shows how robust Dr. Heber's study
16] was looking at emissions from poultry facilities, and so
17] we are saying and also the EPA says that, yes, you may
18] have fantastic beautiful data in the future, but you go to
19] the dance with the girl you got. You go with the data you
20] have at hand. We're not going to wait indefinitely for
21] perfect information, so -- and I think we have some
22] documents in the exhibits that say that by the EPA with
23] respect to the Buckeye egg facility or with the California
24] dairy study. I don't remember the exhibit numbers right
25] off the bat, but they're in there.

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1] So the EPA has been pretty clear all along,
2] even though they know they have the study going on on the
3] side, that they still expect people to use -- to generate
4] emission numbers using the best available numbers that
5] they have at hand, contrary to what the county would like
6] to do which is wait forever, right.
7] So what we're saying is there is a beautiful
8] study out there with these beautiful numbers and there are
9] also consent orders by EPA for poultry egg-laying
10] facilities that have estimated emissions from 2005. So
11] these are emissions that went through a legal process and
12] a consent order and so, you know, they've been tested to a
13] certain extent way more than just a graduate student's
14] thesis, for example, and that those numbers were available
15] to generate a range of emissions from the Tonopah facility
16] which Mr. Blackson had calculated and shown in quite
17] laborious detail in his pre-hearing disclosure.
18] And so my purpose here today is -- as a
19] professional engineer is to say that I've reviewed those
20] emissions calculations. I have reviewed his source
21] material and his methodology of how he presented the
22] information to you, and I believe that he has been fairly
23] accurate in what he has presented to you, and he's shown
24] time and time again, no matter whether you went to the
25] NAEMS study emission factor, whether you went to the

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1] Buckeye factor, whether you went to the -- was it the Iowa
2] factor, I think, whether you were in particulate material
3] or whether you were at VOC's, hitting over a hundred tons
4] per year, sometimes in the 200, 300 tons per year, using
5] existing emission factors, some of which have been
6] available for 11 years now, right.
7] So there's absolutely no reason from this
8] day forward to ignore the fact that you have major
9] stationary sources at the facility that generate more than
10] 100 tons per year and that there needs to be a decision
11] made now whether you continue to provide a non-Title V
12] permit by basically ignoring this information, you know,
13] forever, I guess, or you take a stand at the procedure we
14] are in, the permitting process, which is creating a new
15] permit, a modified permit that at that point, you take
16] that opportunity to remedy and go forward under whatever
17] permit program is required after you do the new source
18] review, correct, which is what we're asking to have done,
19] okay?
20] MR. BLACKSON: Also, sometimes a visual can
21] be very helpful and there's an EPA document that I
22] recently found that talks about AP-42 and it has a chart
23] on it that kind of shows a hierarchy of emission factors,
24] and I would like to be able to enter it in as an exhibit.
25] I did quite a bit of research over the weekend. In

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1] particular, if you would look at page four --
2] MR. SWAN: The county has no objection to
3] this document.
4] CHAIRMAN LEONARD: Okay. We'll admit that.
5] BY MR. BLACKSON:
6] Q. So, Miss Martin, if you could share a little bit
7] more information about emission factors and how some are
8] perhaps more accurate than others?
9] A. Right. I believe we got this from the published
10] AP-42, okay, right, and what's nice about Figure 1 is it
11] includes that engineering judgment I was speaking of where
12] we like to look at, you know, actual emission values
13] obviously, then going to source category emissions models,
14] and then the reliability gets better as you get closer to
15] your facility. And there is additional cost, but what we
16] have access to is unique because we have a national
17] emission study which was paid for, you know, several
18] million dollars was paid for by the participating
19] producers. So we have access to great data without having
20] to make one particular applicant do some testing, right.
21] Q. Okay. Thank you. So you talked about the
22] calculations that I prepared during the pre-hearing
23] disclosure and you found those to be understandable and
24] acceptable calculations; is that correct?
25] A. Correct. I reviewed the calculations. There's

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1] several in this disclosure, three or four different places
2] and I've looked at all of them. So unless we want to go
3] through them one by one, I think if you read the
4] disclosure, you know what I'm talking about. I have
5] looked at his source materials that are also exhibits, and
6] as an engineer, I believe he made good solid decisions on
7] how to transfer some of the emission factors to apply to
8] Tonopah.
9] Q. Do you believe that it would have been prudent
10] for the county, as part of the minor permit modification
11] process, to actually conduct sampling of the existing hen
12] houses at the Tonopah Egg Ranch?
13] A. Well, you're in a unique position. Once that
14] facility's constructed and in operation, no matter whether
15] it's an egg-laying facility, to a power plant or anything
16] else, once the facility is in operation, everyone has
17] access to taking samples, right? And that is built into
18] the Clean Air Act, right?
19] So, yes, and the fact that Hickman's is
20] constructed, the Tonopah facility is in operation, some
21] types of measurements could have been made and you could
22] have followed some of the more complex methods listed in
23] the national emission study or you could have come up with
24] some lesser cost measures, but it can be done, of course.
25] Q. So you're saying that there is a variety of ways

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1] to estimate the emissions from all the sources used in a
2] new source review process for this minor permit
3] modification at the Tonopah Egg Ranch? The county would
4] not be limited to one particular emissions factor; they
5] could have measured -- AP-42 doesn't have a particular
6] emission factor, but they could have measured -- they
7] could have used industry; they could have used the small
8] business approach. There's a variety of ways that
9] emissions factor could be selected?
10] A. Correct. And let me tell you it is the same
11] thing that happens during evaluation of a nutrient
12] management plan. There's like three different ways to
13] calculate the amount of nitrogen in the manure from three
14] different well-known peer review sources, and you can
15] calculate a range from low to medium and just say
16] somewhere in between is where this facility lies or you
17] can be conservative and prepare a nutrient management plan
18] according to the maximum nutrient value.
19] So similarly, you can look at a variety of
20] emission factors that were available, find a range and
21] then either pick an average or somewhere closer to the
22] higher end to be conservative, meaning you're making sure
23] you're not underestimating emissions; you might be a
24] little bit overestimating emissions and see if that
25] triggers a different permitting program. If it doesn't,

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1] it doesn't. But if you've never done the calculation at
2] all, which is what we have determined through the e-mails
3] that Mr. Blackson collected during his public information
4] requests and reading through what he got back from the
5] county, there is no proof of any calculations. And, in
6] fact, I think he got an e-mail response back from
7] Jacqueline or something that just said no calculations, no
8] calculations, no calculations. So there was no doubt that
9] it was not done. We wanted to make sure we didn't miss
10] something.
11] Q. Would you like to discuss the flaws in the
12] county's arguments that they need to wait for official
13] emissions factors from the EPA in order to determine the
14] new source review pollutant emissions from the Tonopah Egg
15] Ranch?
16] A. Right. And this kind of goes to the county's
17] pre-hearing disclosure where they are pointing to Indiana
18] and saying, well, Indiana did -- in fact, in one of the
19] e-mails from the county, Mr. Sumner said, well, Indiana
20] did this study on air emissions and they didn't change
21] Indiana air quality rules to require permits. However,
22] that Indiana study which was done at Purdue by Dr. Heber
23] was not a study for Indiana. It was a study for the
24] national compliance program, first of all.
25] Second of all, I've been working in Indiana

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1] since 2004, and I know a lot of people in the water
2] quality division of IDEM and I know if they have something
3] called a non-regulatory policy statement, that that's not
4] enforceable in the State of Indiana, okay. So that's --
5] which is the document that I believe the county provided
6] as saying, look, they're saying right there in this
7] brochure that the EPA doesn't have a final emission
8] factor, so we're just going to permit boilers and
9] generators, so I think we'll do the same thing that
10] Indiana does, which is an interesting idea to go all the
11] way across the country to Indiana when you can just go
12] right next door to California who has 30 some odd air
13] quality county boards such as yourself that are delegated
14] authority that do have large-scale animal feeding
15] operations that were involved and are involved in issuing
16] permits for animal feeding operations that were under
17] stern compliance eyes of EPA by creating an ag exemption
18] from the Clean Air Act.
19] That's who you need to look for as the -- as
20] your future because that's where somebody is actually
21] doing the permitting they're required to do. The state
22] attempted to provide a statewide exemption for
23] agricultural facilities and EPA came back and say, uh-huh,
24] you can't do. That's in violation of your SIP.
25] So that's who you need to go to for

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1] guidance, the people who are being out there issuing
2] permits and at least being set straight on how these
3] permits need to be operated versus another state who also
4] just threw up their hands and said we're not going to do
5] it until somebody makes us do it. So I find that to be a
6] fatal flaw in that particular part of the argument.
7] I think you have plenty of information in
8] the research out of the national compliance. I think you
9] have resources in the EPA itself, not only in region nine
10] but in other regions such as where Ohio is and how they
11] handle the Buckeye Egg that you could reach out and you
12] could get access to their emission factors and understand
13] how barns are stationary sources and how you estimate air
14] emissions from not only poultry facilities but other
15] housed animal feeding operations in the state.
16] Q. Does the Clean Air Act have an exemption for
17] animal feeding operations?
18] A. No, it does not, and that's been stated over and
19] over again by EPA in the federal register and other legal
20] documents such as Buckeye Egg and the dairy in California.
21] So it's not just my opinion. This is by reading EPA's own
22] words.
23] Q. Are there any other observations, comments that
24] you'd like to make about the stationary sources emission
25] calculations or county's application or regulations

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1] related to the facility?
2] A. Let me just look real quickly at my notes here.
3] I did just want to give a short chronology of events for
4] the record because we didn't really provide anything like
5] that in the -- it might help.
6] You know, the original permit was issued
7] November 2014, and I believe in December of 2014 there was
8] a new ozone standard that EPA came out with in December.
9] In the following year, the application for the minor
10] permit modification was submitted, also November of 2015,
11] so don't mix those dates up.
12] Then meanwhile, this Board made the rule
13] changes to incorporate TSD and that was official in
14] February 2016; maybe not this board but Maricopa County,
15] sorry, and then in May of this year EPA changed the status
16] of Maricopa County from marginal to moderate for the
17] eight-hour ozone. So that's going on in the background of
18] this permit, this minor modification permit being issued,
19] which was then issued June 10th of 2016 this year with the
20] responsiveness summary. And then of course Maricopa
21] County is required to have their moderate ozone plan to
22] the EPA by January 2017 which is just a couple of months
23] from today. That includes your reasonably attainable
24] control technology, your RACT, for the eight-hour ozone.
25] So while this Hickman facility permit was

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1] going on, we know that you had attained -- ozone, you
2] know, attainment, it was like getting within reach. Then
3] you had a bump in Central Phoenix so now you're in
4] moderate so you have some other issues going on. The main
5] issue related to ozone of course is VOC's. Here is a
6] permit, an air permit that completely ignores hundreds of
7] tons of VOC's. So when you look at the documents that
8] were presented to EPA in your state implementation plan
9] where you have your pie charts that show what are the
10] sources of VOC's in Maricopa County non-attainment area,
11] those -- that pie chart is based on invalid, you know, not
12] accurate data, right. So maybe you're not seeing the full
13] impact of some of the animal feeding operations around the
14] Phoenix area.
15] You know, of course, we have a lot of
16] dairies down in cowtown, but I just wanted to bring that
17] up; that under the -- underneath this permit issue that
18] we're talking about today, you also in this county have
19] some pretty serious issues with the ozone and it's all
20] related to VOC's.
21] So I am not sure I am going to give you any
22] recommendations, but I believe that there's an -- it's
23] possible to estimate PM-10 and VOC emissions. It's
24] possible that this facility could be considered from now
25] on to be a Title V facility and therefore start

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1] incorporating, but you need to do a new source review.
2] You need to do that. The applicant and the county needs
3] to do that and make sure that there's some interaction,
4] right. We can't do that for you. We're just showing you
5] that there's definitely signs that it's what you should
6] have done in the past, right.
7] Q. What's your opinion on fugitive and non-fugitive?
8] The county has taken a position that the emissions are
9] non-fugitive.
10] A. Oh, sure, yes, and I wanted to add on to
11] something that Mr. Blackson said in his testimony where he
12] was just talking about the opening of the barns. And if
13] you have ever been out by Hickman's, the typical
14] egg-laying barn is a very long barn, and one end is where
15] they have manure storage and they have an opening there
16] that's permanently opened so trucks can come in and out to
17] get manure, but also so that the ventilation fans inside
18] the barn are blowing the air pollution from inside the
19] barn out of the barn through the ventilation fans across
20] the manure to dry them; thereafter creating more emissions
21] from the drying of the manure, okay.
22] This is fine. Nobody is saying you can or
23] cannot do that, but the actual vents for these barns are
24] those ventilation fans. There is movement from where the
25] animals are laying the eggs, the birds are laying the eggs

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1] where there's -- manure is deposited where it's initially
2] volatilized. The particulate matter is also generated in
3] there from the bird movement, their feathers, et cetera,
4] the feed. Especially when they do feeding, there's a
5] definite rise in particulate material.
6] If you want to look at some of the diagrams
7] in Dr. Heber's report on the Indiana poultry facilities,
8] all of those pollutants have to be removed from the
9] presence of the birds or it will harm them. It's bad for
10] their health. It could kill them. So the vents take that
11] air out and blow it out of the barn, and in this
12] particular design, it's blown out of the barn across the
13] manure pile.
14] So I believe as a stationary source, the
15] vent that you're looking for starts at the ventilation
16] fans and then it's combined into one, and then there's
17] many ventilation fans, and it's combined into one vent at
18] the opening of the barn, and those are not fugitive
19] emissions coming out of the fans; those are non-fugitive
20] emissions and should be treated as such.
21] MR. HISER: For the benefit of the Board,
22] because we have not been there to see it, like you have
23] been, so the barn is a long structure. One end of it is
24] sort of quasi open and has the manure storage, manure
25] handling in that, and then is it your testimony that there

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1] are fans at the end of this long barn which are blowing
2] the air from the laying areas across the manure pile and
3] out the end of the building? Is that what you're saying?
4] THE WITNESS: Let me answer your question.
5] Two things. There's actually an exhibit that has some
6] photographs of the barns and that was -- and we also have
7] some photographs that the citizens took, but the county
8] has some inspection reports that have the pictures of the
9] outside of the barns, but let's look at these two
10] exhibits.
11] CHAIRMAN LEONARD: While you're passing it
12] off, Mr. Blackman, do you have an estimate how much longer
13] you may be? The only reason is if we're getting close, we
14] can finish and then take our break or if you think you're
15] going to go a little bit longer --
16] MR. BLACKSON: I don't expect to be much
17] longer. I have a couple estimates on the other federal
18] register I would like for Miss Martin to respond to and
19] we'll be done.
20] CHAIRMAN LEONARD: Not a problem. I am also
21] taking into account the fact our court reporter hasn't had
22] a break.
23] THE WITNESS: Okay. So we're looking at
24] Exhibit 34 -- 33 and 34 which are color photographs that
25] were taken by the citizens from the road, and let me make

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1] sure I'm --
2] MR. HISER: Why don't you just hold them up
3] so we can see?
4] THE WITNESS: I wanted to make sure I hadn't
5] mixed them all together. So that was my first concern.
6] What we're looking at here is at the corner of, oh, gosh,
7] 415th Avenue and Indian School Road. That is photo number
8] one, so that would be Exhibit 34, and then the other one
9] is -- and what you're going to see here is -- this is
10] probably taken at the same time and these are extras.
11] These -- and according to an e-mail by Kelly Reed, these
12] photographs were taken October 20th, 2016, both of them
13] were.
14] So that we're standing north and east of the
15] facility probably, something like that, because these
16] openings that you see, with the -- like a gray shading at
17] the top, that's actually a fabric awning. It would lay
18] flat if the ventilation fans were not blowing, but when
19] the ventilation fans are blowing from inside the barn,
20] they push this fabric out. It kind of billows out like a
21] balloon. And you see at the bottom of each barn a wide
22] opening and that's where the trucks can come in and out to
23] pick up the manure to take to the Arlington facility.
24] In one of the exhibits -- in both exhibits,
25] you can see some opacity just from like fugitive emissions

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1] from trucks going on a dirt or gravel road.
2] BY MR. BLACKSON:
3] Q. Actually, this is -- this photograph -- both
4] these photographs are from the operation of loading the
5] manure that's piled inside the building with a front-end
6] loader into a truck to be hauled off.
7] A. Sorry about that.
8] MR. SWAN: Mr. Chairman, I believe Mr.
9] Blackson is testifying at this time.
10] MR. BLACKSON: I apologize.
11] THE WITNESS: If we had longer to prepare --
12] to provide this case to you properly, then there could
13] have been someone come up and talk to you about the
14] photographs, et cetera. We were there yesterday, and we
15] saw truck traffic on the other side of the barns which is
16] not where the opening is. So I apologize but, yes, so
17] he's correct. This is during manure load-out. I
18] apologize. We're both a little frazzled trying to get
19] this all in a couple of --
20] CHAIRMAN LEONARD: Just so we can come back,
21] I want to make sure that the question that was asked isn't
22] lost. We were talking about the venting and how the
23] venting might come across, and then when we get to that
24] point, I think the next point is something along those
25] lines. It was a question of making clarification for the

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1] Board as to what your thoughts were on that.
2] THE WITNESS: And I believe the attorney
3] asked if the ventilation fans were at the end of the
4] barns. They are inside internally in the barns. They are
5] on the other side of the manure storage so that they are
6] internally in the barns. They're not at the end. Other
7] types of laying barns, they are actually like on the sides
8] of the barns.
9] BY MR. BLACKSON:
10] Q. Miss Martin, to conclude, do you believe the
11] fugitives from the hen houses -- or the emissions from the
12] hen houses are fugitive or non-fugitive?
13] A. From the hen houses coming through the
14] ventilation fans, they are non-fugitive. Items like the
15] trucks going on the gravel roads, those would be
16] traditional fugitive.
17] Q. Okay. Thank you. There is an exhibit that you
18] have for the federal register. It's volume 70 and I
19] believe it might be Exhibit 13, and what this exhibit is
20] is the animal feeding operations consent agreement and
21] final order and on page 4950 -- or page 4959, in the
22] left-hand column about in the middle I'll go ahead and
23] read this and then I will ask Miss Martin a question.
24] The EPA says, "To the extent that certain
25] pollutants from AFO's are regulated under the Clean Air

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1] Act and are emitted in quantities that exceed regulatory
2] thresholds, EPA can and will require AFO's to comply with
3] all applicable Clean Air Act requirements including
4] limiting those emissions where appropriate."
5] So, Miss Martin, do you believe that the EPA
6] is intending to continue enforcement and has the authority
7] to enforce permitting for poultry operations?
8] A. They have the authority to do permitting and they
9] also have the authority to do enforcement.
10] Q. Thank you. And also --
11] A. Maybe I should clarify. The enforcement -- any
12] enforcement restriction would be given to the people who
13] signed up for the national compliance agreement. There is
14] some restriction on what the EPA will do to sue them but
15] folks that had not signed up or dropped out of the program
16] lost that privilege of amnesty.
17] Q. Also in the same document on page 4961 on the
18] right-hand column kind of towards the upper middle, "EPA
19] recognizes state and local agencies are undertaking
20] efforts to improve emissions estimation methodology for
21] animal feeding operations. EPA supports continuing action
22] to improve emissions information for all sorts of source
23] categories and will use the best information available as
24] we implement our programs. EPA also supports state and
25] local efforts to demonstrate improved emission redirection

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1] strategies and recognizes the value of state and local
2] control requirements tailored to the needs of specific
3] geographical areas."
4] Do you believe that this is a message to
5] encourage state and local agencies to continue to develop
6] emission factors and regulate AFO's?
7] A. Yes.
8] Q. Would you like to add anything else to your
9] testimony?
10] A. Let me check my notes one more time. I think
11] that will be fine.
12] MR. BLACKSON: We're done, whatever the
13] official term is.
14] CHAIRMAN LEONARD: Well, if I might say,
15] understanding that this is somewhat a new process, well
16] done. At this point, what I'd like to entertain is taking
17] a ten-minute break so everybody can get up, stretch their
18] legs, use the restroom.
19] When we come back, there will be an
20] opportunity to the Department to proceed, and depending on
21] how long that takes, we will move into the next phase. So
22] let's adjourn for approximately ten minutes and then we'll
23] go from there.
24] (Recess taken, 3:24 p.m. to 3:37 p.m.)
25] CHAIRMAN LEONARD: All right, folks. Miss

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1] Martin, I hate to be officious for you, but I remind you
2] you're still under oath.
3] If the Department would like to go ahead and
4] cross at this point, this would be your opportunity.
5] MR. SWAN: The Department has no questions
6] to ask this witness.
7] CHAIRMAN LEONARD: Okay. Well, you're good
8] to sit down.
9] Mr. Swan, you're up.
10] MR. SWAN: I would call as our witness,
11] Richard Sumner.
12] MR. HISER: Mr. Sumner, if you could state
13] your name and address for the record.
14] THE WITNESS: My name is Richard Alan
15] Sumner. My address is 1156 East Grandview Road, in
16] Phoenix, Arizona.
17] RICHARD ALAN SUMNER,
18] a witness herein, having been first duly sworn by the
19] Certified Reporter to speak the truth and nothing but the
20] truth, was examined and testified as follows:
21] CHAIRMAN LEONARD: Mr. Swan.
22]
23] EXAMINATION
24] BY MR. SWAN:
25] Q. What is your current position at the Department?

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1] A. I am currently the air quality permitting
2] manager.
3] Q. Can you give the Board a summary of your
4] educational and licensure background, please?
5] CHAIRMAN LEONARD: Mr. Swan, get pretty
6] close to the mike.
7] A. Education-wise, I received my Bachelor's Degree
8] in civil engineering from the University of Missouri,
9] Raleigh in 1977 and subsequently received my Master's
10] Degree in civil engineering from the same university in
11] 1981 with an emphasis in environmental engineering.
12] So when I left college after the Bachelor's
13] Degree in 1977 and began work in the refining and chemical
14] industry, I began addressing air quality issues there.
15] Even when I was in college, I had the opportunity to begin
16] doing some air quality work. One of the papers that I
17] wrote was -- my junior year in 1976 was one addressing
18] ozone depletion, the hole in the stratospheric ozone. So
19] I have seen a few air issues come and go along through the
20] years.
21] After about ten years in chemical refining,
22] we got here to Arizona, went to work in the printing
23] industry, as an environmental engineer for a printing
24] company, and the primary issue we dealt with there was air
25] quality issues.

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1] From there, I moved on to a phone making
2] company; again, additional air issues, particularly VOC's
3] and how to address those, from making phone cups, and then
4] moved to consulting. We did a myriad of types of projects
5] here in companies that we dealt with. One of the more
6] interesting ones was how to address emissions from
7] companies that make rocket fuel for jet ejection seats.
8] So I have seen some interesting things from all different
9] types of air quality issues.
10] And I moved on to El Paso, Texas to work
11] with what was known as El Paso Corp. which is now a part
12] of Kinder Morgan, and there I initially started as a staff
13] engineer working primarily with air quality Title V issues
14] for compressor stations, promoted to the manager over --
15] environmental manager and then I was promoted to the
16] director of environmental health and safety at the
17] corporate level.
18] And so that in about 2003, left El Paso
19] which was then located in Houston, moved to California for
20] a slight career diversion and spent five years as a pastor
21] at a church in California up until 2008, and then I came
22] back to Arizona, resumed my environmental engineering
23] career, started with the county as a staff engineer, was
24] promoted to supervisor over the Title V large source
25] program and then promoted in 2013 to the position I

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1] currently hold which is the permitting division manager.
2] Q. Thank you. Today the focus of our hearing is the
3] Hickman Egg Ranch facility in Tonopah located --
4] MR. HISER: Mr. Swan, before you get any
5] further, is the Department's wish to qualify Mr. Sumner as
6] an expert witness?
7] MR. SWAN: Yes, it is.
8] MR. HISER: Is there any objection from you,
9] Mr. Blackson?
10] MR. BLACKSON: Well, I guess I do. He
11] started off as a -- requested to be a lay witness, not an
12] expert witness and now it's changed. So I guess I would
13] like to maybe question a little bit more about his
14] expertise when it comes to permitting.
15] MR. HISER: Mr. Swan.
16] MR. SWAN: Okay.
17] BY MR. SWAN:
18] Q. Richard, your permitting experience, we've heard
19] about it here with the county. We can come back to it if
20] necessary. In your earlier positions, was there
21] permitting experience that you gained in those?
22] A. Yes, there was. All along, whether it's been
23] starting with the time in the refinery, whether working
24] with the initiation of the Title V program in the late
25] nineties, I worked on probably, I would guess, 40 to 50

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1] Title V permits with El Paso Corp. during that tenure and
2] then we went through probably 4- to 500 permitting actions
3] a year here in the county. So that that total would
4] probably be somewhere over a thousand during my time here
5] at the county.
6] Also, I would like to mention I am a
7] registered professional engineer in the State of Arizona.
8] MR. SWAN: Is there any need for further
9] questioning?
10] MR. BLACKSON: I have no further questions.
11] CHAIRMAN LEONARD: Are you maintaining your
12] objection or are you prepared to allow him in as an
13] expert?
14] MR. BLACKSON: I'm prepared to allow him as
15] an expert witness. Thank you.
16] MR. HISER: Thank you. Just to clarify the
17] record. Thank you. Mr. Swan, back to you.
18] BY MR. SWAN:
19] Q. What type of business is the Hickman Egg Ranch
20] involved in?
21] A. Yeah, they are in the -- in the business of
22] poultry egg producing.
23] Q. Can you walk us through the permitting history of
24] the Hickman Tonopah operation as it concerns Maricopa
25] County Department of Air Quality?

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1] A. Yes. Okay. I believe you heard a little about
2] that earlier. Just to reiterate some of those points is
3] that in 2014, we received the initial permit for the
4] Hickman facility. That permit was granted, I believe, in
5] November of 2014 and it was subsequently requested to be
6] modified, revised in 2015 with a minor permit revision
7] that was submitted, I believe, also in November of '15.
8] That permit was then issued in June of 2016.
9] Q. The first air quality permit issued to Hickman,
10] what classification was that? Was it Title V or
11] non-Title V?
12] A. That permit was a non-Title V permit. You know,
13] we've had a significant amount of discussion about what
14] types of emissions that are to be considered and not
15] considered here so far today, and so when we looked at
16] that initial permit, you know, we looked at the equipment
17] that was being there, and there was 12 emergency engines
18] for part of that original permit and also looked at other
19] pieces to the facility that were -- that were present, the
20] animal feeding operations which includes the manure piles,
21] includes the hen houses, includes the lagoons, and as has
22] been communicated, we considered those to be fugitive
23] emissions for various reasons.
24] Number one, the type of opening that's in
25] the building, we believe those couldn't be reasonably

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1] captured as a point source and should be considered as
2] fugitive. You've seen pictures of the front of the
3] building and the pictures that were taken there, and as I
4] look through some of the documents on the nutrient
5] management plan, there are dimensions for the buildings
6] there that you have in the record that was provided by Mr.
7] Blackson that I believe the width of the opening of those
8] buildings is 84 feet. So it's not exactly a small
9] opening. The height of the building at its peak is about
10] 40 feet before the springs were added to help to reduce
11] the emissions that might be coming out.
12] So this is not a small -- I tried to put
13] 84 feet into perspective, and since it is the middle of
14] football season, I figure that's about a 28-yard
15] completion from Carson Palmer to Larry Fitzgerald. So
16] it's a pretty good gain. So that it's not a small
17] opening. So from that aspect of it, we looked at those as
18] being fugitive.
19] You know, we also considered some of the
20] work that had been done as part of the hen house studies,
21] and EPA and this is -- we relied on this. We looked at
22] the permits was -- that EPA had said these were open
23] issues, whether these were fugitive or non-fugitive, and
24] they would look at those at a later date and begin to
25] provide some emission factors with those and that that was

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1] a national issue that would really require a national
2] solution. So we relied on that when we put the permits
3] together originally.
4] Therefore, the main things that we looked at
5] were the engines that were part of that permit and then
6] with the minor mod, we added eight more emergency engines
7] that are diesel fired; in addition to that, two boilers.
8] So, again, there's some discussion about the boilers, and
9] those were there at the beginning but were only picked up
10] in the minor modification. So those were added into the
11] permit as part of the minor modification at that time.
12] Q. Can you tell us, beginning with the receipt of
13] the application for the minor permit revision, what
14] processes did you go through, you and your staff go
15] through to evaluate that application?
16] A. Whenever a permit application comes in, our first
17] step is to run it through an administrative review to
18] determine whether everything from the administrative
19] perspective is in place: the name is there; is it signed,
20] addresses, contact, just very, very basic information.
21] Once that is complete, we are satisfied we
22] have sufficient information from which to be able to move
23] the permit to the next step, it goes on to the -- assigned
24] to a permit engineer. That permit engineer then begins
25] the technical review process to see if we have the

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1] technical information with which to process the permit to
2] determine, you know, whether it is non-Title V, Title V
3] permit, what rules apply, whether things like NSR apply,
4] what national maximum standards might apply, all those
5] types of things. We -- you know, we look at, whenever the
6] permit comes in, to be able to determine what rules to
7] apply, which of our local rules and what standards to
8] apply once the emissions are determined.
9] So a permit engineer goes through, evaluates
10] all of those types of things. We go through several
11] iterations internally to look at the draft permit. That
12] permit engineer would develop -- and in that draft
13] process, you know, there may be several moves back and
14] forth, and you've seen some of the internal e-mails that
15] were part of that sausage-making process where the permit
16] engineer may put something down and someone else will look
17] at it and say you missed that or why isn't this in there
18] or why is that in there? And so you've seen some of those
19] pieces that we will look at until -- our objective is to
20] get it right, get the permit to be complete as to what
21] information should be in there, what should not be in
22] there and how we are then able to issue that final permit.
23] Before we get to that step, in the internal
24] review process, we look at it among the engineering staff.
25] The supervisor can be -- can be in on this one and then we

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1] also will have compliance look at it. We'll have the
2] compliance staff take a look because they look at things
3] maybe a little differently than the engineers would
4] because they're boots on the ground, in the field more so
5] than us.
6] Then once we have a draft permit that we are
7] satisfied with internally that we feel meets all the legal
8] requirements, that meets all the rule requirements, meets
9] all the technical requirements, then we will forward that
10] on to the source to give them an opportunity to look at
11] it, because whenever -- you know, they are obviously more
12] knowledgeable of the source than we are. So if there's
13] something that we miss or misinterpreted, we want the
14] source to be able to have the opportunity to identify that
15] so that we can correct it. So once all that is done, then
16] we will issue the permit.
17] Now, in the case of this minor modification,
18] there is a step that is not normal for us, and I'm not
19] sure I've ever seen a minor modification have a public
20] hearing. But because of the elevated public interest and
21] also because of Mr. Blackson, we posted it for a formal
22] 30-day public notice time which would not be normal for --
23] our rules would not require this for a minor modification,
24] but we did in this case and so -- to have opportunity for
25] people to provide input, to comment on the permit and to

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1] give us -- give us their thoughts or inputs as to what
2] should be there.
3] And so in that process, we not only did the
4] public -- or posting for public notice, we also then held
5] a public hearing to give, again, additional oral
6] opportunity for people to -- opportunity for oral comments
7] on the permit, not just what is submitted in writing.
8] So after all those were completed, we
9] addressed the comments that were made and put those
10] together in response to comments and that puts us in a
11] position then to issue the permit.
12] Q. You mentioned that you were the head of the
13] permitting department and quarterback of a staff of people
14] that work for you. But with regard to this particular
15] minor permit revision, how actively involved were you in
16] the process of evaluating it and the analysis that goes
17] on?
18] A. Yeah, I had more involvement in this one than I
19] would typically because of the elevated interest that was
20] there, and so we wanted to make sure that we had as many
21] people look at it and make sure we got it right. So I was
22] probably more involved in this than I would be typically.
23] Q. In particular, you were involved in the
24] calculations that were made by the Department?
25] A. Yeah. So when the calculations -- the staff

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1] engineer would do that, and then all those calculations
2] would then be reviewed by both the permitting supervisor
3] and by me also to make sure that those were correct.
4] Q. Let me step back to one thing that I meant to ask
5] you which was the -- you said one of the steps you look at
6] on a routine basis -- and I assume what you described was
7] both what the Department or your staff does in a typical
8] evaluation as well as what you did for the Hickman
9] evaluation; is that correct?
10] A. Right.
11] Q. What about -- one of the steps would be assuring
12] that the application is complete. Was there anything
13] special or anything particular about the Hickman
14] application in that regard?
15] A. Yes. With the -- with regard to the completeness
16] of the application, it's been noted earlier that there's a
17] section known as Z-M that was missing information, and so
18] that's a section where the applicant has the opportunity
19] to be able to describe and calculate what the emissions
20] would be from the source, and in this case, it was not
21] filled out by Hickman's in their initial application, in
22] the minor modification application, and that's not
23] unusual. As a matter of fact, it probably happens more
24] that it's not filled out than it is because many sources
25] do not have the sophistication or tools to accurately be

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1] able to calculate and predict what those emissions would
2] be, and so -- but on the other hand, if we have sufficient
3] information to be able to calculate that, we will do so.
4] And where we had the information on the
5] engines and on the boilers, as to what size they were,
6] what types they were -- for instance, the engines were
7] tier three engines. So with those, there are certified
8] EPA emission factors that come with those. So even though
9] the specific emission calculations weren't filled out, we
10] had the opportunity then from the description of the
11] equipment to be able to know what the emissions were. And
12] even if someone does fill that out, we will always rerun
13] those anyway because we're really -- we're not going to
14] take the applicant's word for what those emission
15] calculations are. We're always going to confirm those,
16] even if they were provided by the applicant.
17] Q. Earlier there was testimony about the emission of
18] boilers in the minor permit revision. Were the emissions
19] of the boilers ultimately included? Were they included in
20] the final emissions calculations?
21] A. Yes, the boilers were included in there and,
22] again, part of that sausage-making process, when drafts
23] are moving back and forth among staff and supervisors,
24] different ones, we may have pieces that are missing. So
25] those were probably missing at one step of the drafting of

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1] the TSD when that passed through, and we tried to get that
2] information and understand what -- once we understood that
3] the boilers were there and be able to appropriately add
4] those to the emissions for the facility.
5] Q. Let's get back to emissions calculations. What
6] emissions were calculated?
7] A. So the emissions that we calculated were from the
8] point sources, from the non-fugitive emissions which would
9] be from the boilers and from the generators. We
10] characterized the emissions from the CAFO, from the animal
11] feeding operations, again, the lagoons, the hen houses and
12] the manure piles, and we captured those as being fugitive
13] emissions. And even if they had been -- so fugitive
14] emissions, whether there's a determination whether they're
15] part of a Title V determination or not, was pointed out
16] earlier from Rule 100, I believe 200.60, if I remember
17] correctly, of the determination of a major source.
18] When you have fugitive emissions, you
19] include those only if the major source is one of those 28
20] categorical sources listed there in 200.60. So we went
21] through the first part of that where it talked about
22] fugitive emissions and calculations that go into the major
23] source determination, but fugitives for sources that are
24] not listed as categorical in that group, and you see the
25] 28 of them that are there, all other fugitive emissions

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1] are not included for major source purposes for operations
2] that are not on that list. In this case, hen houses are
3] not on that list, so therefore, fugitive emissions were
4] not considered to be part of that.
5] Q. So in conclusion, it is your opinion that all of
6] the emissions pertaining to the minor permit modifications
7] were properly calculated?
8] A. Yes, we do believe those were properly
9] calculated, and we had plenty of reason to not include
10] those. We've talked a little bit about what other states
11] are doing. You heard about that. When we look at the
12] State of Arizona, basically farm operations are exempted
13] from Arizona, whether -- that is the law today. Recently
14] as last year, the NSR rules for the State of Arizona were
15] revised. That was not deleted from any NSR rules at that
16] time, and so we believe that what the prevailing rule is
17] that we would not include those here; that even though
18] they may be included in other jurisdictions, as we look at
19] the data that's out there and see that, we just see it is
20] as not reliable enough for us to run out ahead of where
21] EPA is.
22] We look at how EPA regulates things. We see
23] there are a number of ways they do that. They may do that
24] on the basis of different types of rules or new source
25] performance standards of which there's probably maybe 150

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1] or a hundred new source performance standards out there,
2] none of which pertain to this type of operation. There
3] are max standards, maximum available control technology
4] standards, maybe another 150 of those, none of which
5] pertain to this operation.
6] There are control technique guidance
7] documents that whenever EPA wants to regulate something,
8] they will provide that as a means for sources to be able
9] to determine what the emissions are and how to handle
10] those. There's been no CTG's or control technique
11] guidance documents provided for this. There are a number
12] of ways that EPA will regulate these different type of
13] sources, and we did not see that that had occurred in any
14] of those.
15] We also looked at the State of Indiana that
16] has been mentioned and whether the tests were run by the
17] state or not. They were run by Purdue University which is
18] in the State of Indiana, chose a facility there, and after
19] they looked at that, we looked at, yeah, this is a similar
20] type situation to what we have, and it seemed reasonable
21] at that time to say, you know, if they're looking at this,
22] they are disregarding -- they are not going to regulate
23] the animal feeding operation, the emissions only that come
24] from the point source equipment, it seemed like a
25] reasonable conclusion for us to reach in doing likewise

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1] here with this facility.
2] Q. I'd like to dwell for a minute on NSR. Mr.
3] Blackson mentioned surprise that it didn't appear that you
4] had considered NSR, new source review. Can you tell us
5] again how -- or tell us for the first time what your
6] review was and what consideration was given to the
7] potential applicability of NSR to this facility under this
8] permit modification application?
9] A. Sure. NSR is new source review, and it applies
10] in non-attainment areas. Where the facility is located,
11] it is located in the non-attainment area for ozone. For
12] ozone -- the precursor for ozone are NOx, nitrogen oxide,
13] and VOC, volatile organic compound, is a precursor for
14] ozone. So those are the pollutants that you would look at
15] primarily under NSR.
16] So the threshold for that would be -- for a
17] major source in our current attainment status which is
18] moderate, non-attainment of where we are, and so the
19] threshold for that would be 100 tons per year. And
20] looking at the point sources, the total NOx emissions
21] under the minor modification are a total of just under
22] 25 tons of NOx, so it is well below the NSR threshold for
23] NOx.
24] The VOC emissions from the engines and the
25] boilers are like 1.2 tons. They are relatively small.

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1] So, you know, we concluded that they were well below the
2] NSR thresholds. As we previously mentioned, we did not
3] look at the -- any fugitive emissions as part of the major
4] source determination under NSR because it is not a
5] categorical source, and not being a categorical source, we
6] did not look at the fugitive emissions.
7] Q. Did the Department perform a Rule 241 assessment
8] and could you explain what that is?
9] A. Yeah. Rule 241 is -- we affectionately refer to
10] it as our local BACT rule, best available control
11] technology, and that -- and so when looking at this
12] facility, the total emissions for BACT would be -- or the
13] threshold for BACT, for NOx would be 25 tons at the time
14] because we were dealing under the old rules. That has
15] since been moved up to 40 tons per year. At that time, it
16] was 25 tons per year. From the original permit, the
17] emissions of NOx from the original permit was about
18] 60 tons so BACT did not apply, and so Rule 241 would not
19] be triggered.
20] With the minor modification, about another
21] additional eight tons of NOx was added and so we were
22] still below 25 tons total which is really not even
23] relevant because we'd only be looking at the modification
24] anyway. The modification was only eight tons of NOx. So
25] therefore, under Rule 241 -- and even though it's not

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1] spelled out explicitly in the TSD, as Mr. Blackson noted,
2] you know, there's a fair amount of latitude with that, but
3] we did look at those total amount of emissions and found
4] that the BACT would not apply which would be the essence
5] and the substance of Rule 241.
6] Q. Would an NSR normally apply to a minor permit
7] modification?
8] A. No. You could not have NSR apply to minor permit
9] modification because the definitions we looked at earlier
10] would preclude that from occurring.
11] Q. Mr. Blackson used emission factors to calculate
12] the emissions from the Hickman process. Are those
13] emission factors credible in your mind and based your
14] analysis and expertise?
15] A. You know, there are a myriad of emission factors
16] out there that we have seen. I know, looking through one
17] of the documents that was provided by Mr. Blackson in
18] their disclosure of the 2006 study from Iowa State
19] University, that showed just ammonia emissions, for
20] instance, that are there. The EPA had estimated in that
21] that the emission factors for ammonia should be like
22] 435 --
23] MR. BLACKSON: I object to this because
24] ammonia is not permitted. It's not an -- I object because
25] ammonia is not a permitted pollutant; it's not an NSR

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1] pollutant. You don't have to have a permit to release
2] ammonia, but when you get into EPCRA and that sort of
3] thing, then ammonia is in play.
4] CHAIRMAN LEONARD: I'm going to overrule
5] that objection only from the standpoint that there's --
6] we're talking about credibility. If you have other
7] concerns, again, you'll have the opportunity, as I
8] mentioned, for cross so --
9] THE WITNESS: But in those -- determination
10] of those emissions, EPA would have a factor of 435 grams
11] of ammonia per year per each hen and which I would think
12] that European numbers in the Netherlands would be pretty
13] credible. That range was ten to 83 grams per hen per
14] year. So you can just see the massive variation that
15] occurs in different emission factors that are out there
16] depending under what circumstances that they were run.
17] They range all the way from ten to 435 for the same type
18] of emission factor. And so with that absence, we felt
19] like that the emissions factors just really weren't there
20] to do that.
21] There's also a General Accounting Office
22] report that was done, that was completed, and I believe
23] this is also in our record. I don't know the page number
24] right off. Do you guys have that over there handy that
25] you can point these folks to, where the page number is on

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1] that? I believe it's somewhere probably page AQ600
2] something. I can't remember what the final exact number
3] is.
4] Q. Can you identify the document again? I'm not
5] sure I heard that.
6] A. It's a document for the General Accounting Office
7] where they evaluated concentrated animal feeding
8] operations in looking at the studies that had been done,
9] and their conclusion was that EPA -- or the title of the
10] document was EPA needs more information and clearer
11] defined strategies to protect air and water from
12] pollutants of concern, and this was on the -- on the back
13] side of the main study, the national air emission
14] monitoring study that had already been done.
15] So they had some conclusions about that
16] report, if I may read those here. I have the page number.
17] It is AQ0683, if that will help you find that in your
18] documents, in our pre-disclosure documents that were
19] provided.
20] It says, "However, questions about the
21] efficiency of the sites selected for the air emission
22] study and the quality and quantity of the data being
23] collected could undermine EPA's efforts to develop air
24] emission protocol by 2011, and finally, while the study
25] and resulting protocols are important first steps, the

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1] process-based model that more accurately predicts the
2] total air emissions from an animal feeding operation is
3] still needed. While EPA has indicated it intends to
4] develop such a model, it has not yet established a
5] strategy and timeline for this activity."
6] And so, again, we're trying to look at the
7] body of evidence that's out there. Are we running too far
8] ahead to be able to come up -- use emission factors that
9] may or may not have quality? And, again, our conclusion
10] was the science just wasn't there yet. And when the
11] science is there, we are -- we'll very actively and
12] vigorously be able to enforce those and put those in the
13] permit and apply those to the appropriate sources, but we
14] believe at this time that those are not there yet.
15] Q. The minor permit revision was to authorize the
16] addition of boilers and eight emergency, small emergency
17] generators as I recall, and both of those were
18] characterized by the Department as point sources. Can you
19] explain the determination in that regard briefly?
20] A. Sure, because the emissions from those types of
21] operations come through a defined stack, through a defined
22] point in the equipment rather than some large amorphous
23] opening that really has no opportunity to be captured,
24] controlled or really even accurately measured. Some of
25] the other literature that we have looked at, you know,

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1] talked about how difficult it is to measure just, in
2] general, emissions from hen houses and those types of
3] operations, that it's one of the great encumbrances to be
4] able to quantify emissions that were out there, and
5] whenever you're dealing with this type of operation, it is
6] difficult to do.
7] Again, we think that the science will get
8] there, but we just don't believe that it's there yet for
9] this type of point source that -- these are the point
10] sources and the other -- all the rest from the animal
11] feeding operation are fugitive emissions.
12] Q. I'm getting close to the end of my questions.
13] The Department has not promulgated rules addressing
14] emissions from hen houses, manure piles and lagoons. Can
15] you tell us why that is the case?
16] A. At this time, that is not a source category
17] that -- you know, that we have looked at, and so those
18] emissions are not yet ones that we've elected to be able
19] to quantify as we begin to work through different types of
20] emissions that are out there.
21] Q. Okay. This is my final question: Based upon the
22] cumulative information you provided, based on calculation,
23] characterization and legal requirements, did the
24] Department apply proper permitting standards and
25] procedures when analyzing and evaluating the minor permit

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1] revision?
2] A. Yes, we did.
3] MR. SWAN: I have no further questions.
4] CHAIRMAN LEONARD: Mr. Blackson, if you'd
5] like to cross.
6] MR. BLACKSON: Yes, I would.
7]
8] EXAMINATION
9] BY MR. BLACKSON:
10] Q. Thank you, and, I apologize, I may skip around a
11] lot and kind of --
12] A. I do too, so that's all right.
13] Q. I think we're going to get through it.
14] Mr. Sumner, you've had training, right, on
15] the permitting process? EPA offers some training that we
16] talked about?
17] A. Yes.
18] Q. And how recent was that?
19] A. Probably the last one was about probably two
20] years ago where we went through NSR training and BFP
21] training that's offered nationally by EPA.
22] Q. Thank you. Can you show us in the Clean Air Act,
23] is there an exemption for animal feeding operations?
24] A. No, there is not an exemption in the Federal
25] Clean Air Act for animal feeding operations.

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1] Q. Now, you said there was an exemption, if I heard
2] correctly, an agricultural exemption. Can you cite what
3] that exemption is?
4] A. Yeah. The agricultural operations for poultry,
5] for cattle, for pigs, for different types of animals,
6] those are under the agricultural exemption under ag BMP's
7] for the state, and so we did not regulate those.
8] Q. So you must be talking about ARS 49-457, correct?
9] A. Yes.
10] Q. That exemption for all NSR pollutants?
11] A. It's primarily for PM-10 and so the PM-10
12] emissions then are ones that --
13] Q. But not for BFP's?
14] A. Under that exemption, no.
15] Q. Now, you're saying it's an exemption. Perhaps
16] you can read the definition of a regulated area. That
17] definition will be at the very bottom. It's page six?
18] A. I'm looking on the front page.
19] Q. They change how it appears now.
20] A. Regulated means Maricopa PM-10 particulate
21] non-attainment area, any portion of area A that's located
22] in the county with a population of two million or more
23] persons and any PM-10 particulate non-attainment area
24] established in this state on or after June 1st, 2009.
25] Q. Does the word state or statewide appear in that

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1] definition of a regulated area?
2] A. It does not.
3] Q. Does the word county or countywide appear in it?
4] A. County does.
5] Q. Is it countywide, entire county?
6] A. Area A or PM-10 particulate non-attainment area.
7] Q. Is the Tonopah Egg Ranch in a regulated area?
8] A. It is not.
9] Q. Yet you apply BFP to the Tonopah Egg Ranch?
10] A. That is correct, because we have received
11] guidance from the state that PM emissions are of a
12] statewide concern, and that even though this may
13] specifically list deregulated area here, that they have
14] taken the interpretation that this is a statewide concern
15] and therefore they are going to apply BMP's to all areas.
16] Given the county rules that exempt normal farm cultural
17] operations from PM-10 regulations, then neither us nor the
18] state would be able to have any activity and so the state
19] has taken that activity there.
20] Q. And all of this came from a SIP process where the
21] EPA was going to come in and issue a SIP on agricultural
22] activities and things?
23] Q. The EPA was interested in implementing a federal
24] implementation plan because there was a gap in these
25] regulations.

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1] Now, the statewide concern does appear in
2] that statute, if I'm not mistaken. They make a
3] philosophical statement about statewide concern about
4] particulate matter; is that correct?
5] A. That's correct.
6] Q. But yet the legislature decided that's not how a
7] regulated area is defined, correct?
8] A. I can't address what the legislature might have
9] said.
10] Q. Well, the legislature passed a statute, correct?
11] A. That's correct.
12] Q. Did the legislature include a statewide BMP
13] policy for a regulated area?
14] A. That -- I don't know what the legislature
15] included. I knew ADAQ has, so we are kind of subservient
16] to them.
17] Q. Did the legislature in the definition of
18] regulated area give ADAQ authority to make it statewide?
19] A. No.
20] Q. Did they give authority to Maricopa County to
21] make it statewide?
22] A. No.
23] Q. Or countywide?
24] A. Countywide, no.
25] Q. Yeah. So the county is overreaching in this case

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1] applying a regulated area to the Tonopah Egg Ranch because
2] it does not typically reside in a regulated area?
3] A. Can you rephrase the question, please?
4] Q. The Tonopah Egg Ranch does not reside in a
5] regulated area, correct?
6] A. It does not reside in a regulated area.
7] Q. Physically located. So, Mr. Sumner, have you
8] ever considered the emissions from the Tonopah Egg Ranch
9] to be normal farm cultural activity?
10] A. Yes.
11] Q. And what is a normal farm cultural activity? Can
12] you define that?
13] A. I'd have to refer back to the rules to get the
14] exact definitions, so it's probably there pretty close.
15] Q. I can help you.
16] A. Bet you could.
17] Q. Can you read for us what this is?
18] A. All agricultural activity by the owner, leasee,
19] agent, independent contractor --
20] CHAIRMAN LEONARD: Mr. Sumner, just remember
21] to slow down.
22] A. "Normal farm cultural practice. All activities
23] by the owner, lessee, agent, independent contractor and/or
24] supplier conducted on any facility or production of crops
25] or in nursery plants, disturbances of field surface caused

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1] by turning stalks, tilling, fertilizing or harvesting are
2] included in this definition."
3] Q. So as part of the property, there are fields at
4] the Tonopah Egg Ranch, so the fields would meet that
5] definition?
6] A. Correct.
7] Q. Now, would the hen houses?
8] A. Not in this particular definition.
9] Q. So even though you stated that the normal farm
10] cultural activity would apply, it doesn't meet the
11] definition?
12] A. Not in this particular area. I'm trying to think
13] of the other -- it's defined in other places in the rules.
14] I don't know if those are more expansive, so not off the
15] top of my head.
16] Q. This is an important point, so if you want to
17] take some time to tell us what that is, I would appreciate
18] it.
19] A. We may have to come back to that. I know we have
20] it defined other places other than this. What you have
21] provided me, just for the record, is Rule 310.
22] Q. Now, the permitting supervisor actually stated
23] that he believed that the Tonopah Egg Ranch was not in a
24] regulated area and the BMP's would not apply?
25] A. Yes, and the context of that --

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1] Q. A yes or no, thank you.
2] A. Yes.
3] Q. Thank you. You made a statement about ammonia
4] emissions. Can you also talk about, in the same vein, the
5] PM-10 and the PM-2.5 and the VOC emission factors?
6] A. Right. I just know that those were -- one of
7] them that showed a rate variation. I know there is a
8] large variation on the other factors that have been
9] developed also. I don't have the exact numbers on those,
10] but I know they have ranges on them in what is provided.
11] Q. So that it is very possible that there might be
12] some difficulty in measuring ammonia but they might carry
13] over to measuring PM-10, PM-2.5 or VOC's?
14] A. Yes. If I remember correctly from some of the
15] ranges that are there, the PM numbers have a substantial
16] range on those.
17] Q. Now, you also talked about the -- this Indiana
18] policy. You reached out and found this and that's not a
19] rule, right? I think it says right on there it's not a
20] rule?
21] A. Yep.
22] Q. Yeah. Did you research any other states?
23] A. We looked -- I am trying to think of other states
24] we looked at recently. Even since this started, we looked
25] at a few more, looking at any of them that had specific

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1] rules, and I did not see any that gave specific emission
2] factors for those.
3] Q. Did you find any states that actually are
4] regulating animal feeding operations air-quality-wise?
5] A. I think I saw one report where there are about
6] six states and most of those are regulating the H2 S1
7] table that I saw.
8] Q. What about California?
9] A. I'm not sure what California is regulating.
10] Q. But could you have reached out to California like
11] you reached out to Indiana to find out?
12] A. Yes.
13] Q. Or Texas? Texas regulates issues of air quality
14] permits for animal feeding operations. Did you talk with
15] Texas?
16] A. No.
17] Q. Idaho?
18] A. No.
19] Q. Ohio?
20] A. No.
21] Q. The interesting thing about Ohio is the Buckeye
22] Farms, and I think you probably prepared by looking at
23] that consent order and the news release.
24] A. Mm-hmm.
25] Q. Would you agree that in order for the EPA to have

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1] issued that consent order, they must have determined what
2] emissions factors are from those hen houses?
3] A. Yes, and I know that there are places where that
4] has been -- where that has been done but, again, our
5] posture was that we're not there yet with the overall
6] science and so we said those would continue to be looked
7] at as fugitive emissions.
8] Q. But based on the EPA activity, they're ready to
9] act, right?
10] A. They don't seem like it, because I mentioned
11] earlier they haven't provided any control technique
12] guidances and documents; they haven't provided any new
13] source performance standards; haven't provided any MAC
14] standards. They haven't provided anything that they
15] typically do to underwrite the regulation of different
16] types of industries.
17] Q. However, you're not limited to issuing permits
18] just to those facilities? A source doesn't have to be
19] categorized to receive a permit?
20] A. That is correct.
21] Q. All right. And if we go back to the Buckeye
22] Farms, the EPA very clearly demonstrated that you can
23] proceed and permit those facilities, and somehow, did you
24] reach out to the EPA for emission factors?
25] A. Yes, I believe we did talk to region nine on that

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1] so --
2] Q. And could you share that conversation?
3] A. Yeah, there was -- they didn't provide any
4] additional guidance to us, and we provided information on
5] Hickman's. I believe that's in some of the records there
6] that we have provided to Hickman's.
7] Q. And when did you do that?
8] A. I don't remember the date off the top of my head.
9] Q. When the initial permit or the minor permit --
10] A. I think it was probably the minor permit process.
11] Q. I'd like to talk about fugitive emissions, and I
12] think both of us have cited to the Federal Register with
13] the consent agreement for animal feeding operations, and
14] in that agreement, and I'll paraphrase, the EPA had said
15] that we're not going to make decisions on fugitive
16] emissions at this time; we'll do that later.
17] So there's a range of fugitive emissions,
18] isn't there? For instance, you can have a dust devil
19] going across a vacant lot versus a power plant that has a
20] stack, fugitive emissions versus non-fugitive emissions;
21] would you agree with that?
22] A. I am not sure what I would be agreeing to.
23] Q. Give us an example of non-fugitive emissions.
24] A. Anything that goes -- you know, in this case what
25] we were looking at would be the engines that would go

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1] through a stack so --
2] Q. The engines, the diesels go through a stack?
3] A. The diesel engines, yeah, they have a stack on
4] those.
5] Q. Oh, okay. And what would be -- not citing the
6] hen houses, what would be a non-fugitive example, an
7] extreme non-fugitive example?
8] A. Extreme?
9] Q. Sure.
10] A. I'm not sure I want to define what extreme --
11] Q. What about a wind blowing across a vacant lot, is
12] that fugitive or non-fugitive.
13] A. It would be fugitive; that would be fugitive.
14] Q. Okay. So we have a wind blowing across a vacant
15] lot is fugitive and a stack from a diesel is non-fugitive.
16] Now, when we start to move to the middle, does it get
17] easier or harder to differentiate between fugitive and
18] non-fugitive?
19] MR. SWAN: Before you answer that question,
20] I'm questioning whether this line of questioning isn't
21] beyond the scope of my direct examination of Mr. Sumner,
22] so I ask the Board to consider that.
23] CHAIRMAN LEONARD: Mr. Blackson, I don't
24] want to put words in your mouth. You're asking the
25] Department to provide examples of fugitive versus

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1] non-fugitive events in relation to how they may or may not
2] have applied that to the minor permit revision?
3] MR. BLACKSON: No, I'm not. I guess I'm
4] trying to lay the groundwork that there's a range from
5] fugitive to non-fugitive, and as you get to the middle
6] ground, it's more difficult to sort out which is fugitive
7] and non-fugitive. And I believe that's where the EPA is
8] right now and that's why they have not given guidance.
9] They have a very clear opinion of a hen house by the
10] consent order at Buckeye.
11] CHAIRMAN LEONARD: With respect then to the
12] Department's objection, I'll overrule that. I believe
13] that Mr. Sumner has already discussed this, and so again,
14] understanding that we're talking about cross, just try and
15] make the point.
16] Mr. Sumner, answer as you deem appropriate.
17] Please proceed.
18] You can ask the question just as you did
19] before.
20] MR. BLACKSON: I'd like to gather myself for
21] a second. And it might help if the court reporter could
22] help me out.
23] (The record was read by the reporter.)
24] BY MR. BLACKSON:
25] Q. So is it more difficult, as you get to the middle

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1] of non-fugitive and fugitive, to differentiate which is
2] which?
3] A. Yes.
4] Q. So would you say, yes or no, that it's possible
5] that EPA hasn't issued guidance because that middle
6] ground, perhaps where you have an animal in a covered
7] corral, that you don't know whether that's fugitive or
8] non-fugitive yet?
9] A. Correct. It can be difficult to define.
10] Q. It can, but if we look at the EPA actions such as
11] the Buckeye Farms, it's clear that the EPA, since they
12] issued a consent order believe that the emissions from
13] those hen houses were non-fugitive?
14] A. Yeah, it was clear in that situation.
15] Q. All right. Thank you. I would like to talk
16] about vents then, and we've both cited the statute about
17] buildings and vents and functional openings, and you make
18] a very good point that the opening at the Hickman hen
19] house is very large, right?
20] A. Mm-hmm.
21] Q. So if you start to shrink it down, when does that
22] opening become a vent?
23] A. That would just be part of the judgment that we
24] would employ in making that determination. There's not a
25] hard-and-fast number which is why some are regulated in

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1] some places and some are not regulated in others because
2] there is -- there is a spectrum there.
3] Q. Is there any regulatory basis for saying what the
4] size of the vent is or is not?
5] A. I think the modifier at the beginning of the
6] definitions is reasonable, what is reasonable.
7] Q. What about a functional opening? How large can a
8] functional opening be?
9] A. That's also a term of art to be determined on
10] what that would be.
11] Q. So it's just as reasonable to say that that
12] opening is a vent as it's not a vent, versus one person
13] and another?
14] A. Correct.
15] Q. And so I'm not sure if I'll be allowed to do
16] this, but a comparison of another facility that you
17] permitted that doesn't have an opening like that, so they
18] are vents? If the design was different, there could be a
19] vent in that building then, in your opinion?
20] A. Yeah. We're going to look at every situation
21] individually.
22] Q. But again, when we look at the EPA and their
23] actions with Buckeye Farms, they clearly decided that
24] whatever opening is in a hen house is a vent and they
25] issued that consent order according to that. Would you

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1] agree with that?
2] A. Yes.
3] Q. So somehow there has to be some ultimate
4] determination of the size of the vent in a functional
5] opening?
6] A. I think we would both agree on that one.
7] Q. Actually not. An opening is an opening; a
8] functional opening is a functional opening, so we probably
9] would not agree, no matter how large or how small. Sorry
10] if I'm testifying. I don't mean to do that so I'll stop.
11] So, Mr. Sumner, you said you got pretty
12] involved with this minor permit modification. So can you
13] describe where these fans are in the building and what
14] they do and maybe how big they are?
15] A. As I understand, the fans are probably, what,
16] about three quarters of the way through the building, more
17] toward the east end and they're there to blow through the
18] manure piles as they come off of the -- when the manure
19] comes off of the conveyer belts, be able to dry those out
20] and to reduce the moisture in those.
21] Q. Are the fans pulling air across the hens then?
22] A. Right. They are blowing from west to east.
23] Q. And where are the hens?
24] A. They're behind those on the east side on the
25] various levels, on the west of the fans.

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1] Q. And then the manure piles are on the east side?
2] A. East side of the fans.
3] Q. And the fans are blowing across that. Is there
4] particulate matter being picked up by that ventilation and
5] blown out of the building?
6] A. Yes, there is.
7] Q. And what is the purpose of those fans? Can you
8] say?
9] A. Yeah, my understanding is to dry the manure piles
10] to make those really -- as I understand, to reduce any of
11] the emissions from those.
12] Q. Do they serve a purpose for the birds?
13] A. The fans?
14] Q. The fans, yes, sir.
15] A. Yes. They're also to keep the birds cool which
16] is the purpose of the emergency generators that they are
17] there as part of the process, so in case the power goes
18] down, the emergency generators are there to make sure that
19] the birds will stay cool.
20] Q. Do those fans also remove pollutants, NSR
21] pollutants?
22] A. Yes, they would move pollutants across there.
23] Q. So the fans would bring in fresh air and through
24] forced ventilation remove the pollutants?
25] A. They would bring in fresh air through the west

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1] open end of the building out through the -- for the most
2] part, opened east end of the building.
3] Q. Are the hen houses stationary sources?
4] A. We would not consider those to be stationary
5] sources.
6] Q. And why would they not be stationary sources?
7] A. Because of the fugitive emissions from those.
8] Q. Fugitive emissions in the definition of a
9] stationary source?
10] A. I'd have to go back and look again.
11] Q. Let's do that. I think that would be in
12] Rule 100.
13] A. Yeah, let's go ahead and look at it. I'm not
14] seeing the definition of stationary source in what you
15] handed me there. I see a major source but I don't see
16] the stationary source.
17] Q. Actually, we might have to go to the CFR 51.165.
18] CHAIRMAN LEONARD: For the interest of
19] expediting this, I believe you're looking for Rule 100,
20] section 200.105, page 29.
21] MR. BLACKSON: All right. Thank you. It is
22] in Rule 100.
23] THE WITNESS: All right. So Rule 100,
24] 200.105, "Stationary source. Any source that operates at
25] a fixed location and that emits or generates regulated air

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1] pollutants."
2] BY MR. BLACKSON:
3] Q. Are the hen houses in Tonopah Egg Ranch
4] stationary sources?
5] A. Yes, they would be stationary sources.
6] Q. Thank you. You had commented earlier that there
7] actually was an assessment of the applicability of the
8] requirements of Rule 241 as part of the process. Is that
9] documented?
10] A. We did not document that, as we just looked and
11] saw that the emissions were below the thresholds that we
12] looked at with regard to the point sources; that they were
13] below the thresholds so therefore it was obvious that we
14] didn't document that in the TSD.
15] Q. Is that a normal practice?
16] A. Pretty much.
17] Q. So how would you show compliance with your
18] permitting process through your rule if you don't document
19] it? For example, you have a checklist for completeness.
20] Why would you not document an assessment of applicability?
21] A. We would just be looking at the emissions. They
22] are below 25 tons so that, again, it's one of those things
23] where it's obvious that it would not require any further
24] discussion so they would be below any of the thresholds.
25] Q. But how would you ever demonstrate it?

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1] A. By the amount of emissions that are listed in the
2] tables in the TSD.
3] MR. BLACKSON: I'm done. Thank you.
4] CHAIRMAN LEONARD: All right.
5] MR. SWAN: I have a couple questions on
6] redirect.
7] CHAIRMAN LEONARD: Mr. Swan, you're up on
8] redirect.
9]
10] EXAMINATION
11] BY MR. SWAN:
12] Q. Okay. Mr. Sumner, EPA is the governing body for
13] this type of activity, so why would you have reached out
14] to other states to see what they are doing in this area?
15] A. Right. EPA is where we take our ultimate
16] guidance from and look for ultimate guidance. Sometimes
17] it's valuable to see what other states may or may not be
18] doing.
19] Q. Okay. But it's -- is it for precedent? Is it to
20] establish what regulations would govern the activity or is
21] it just to see what others are doing in the area, given
22] the fact that EPA has not nailed down its opinion and not
23] issued regulations in this area?
24] A. Yeah, whenever it's an area like this that is in
25] flux. I think it's well established here today that this

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1] is a developing area, so we're trying to see kind of
2] what's out there, what are other people doing.
3] Q. But it's not required looking at other states?
4] It's informative, but not required?
5] A. Right, that's correct.
6] Q. I'm looking at ARS -- two sections of ARS 49-457
7] the first is P5(a) and if I can just read that small
8] paragraph to you. I have a question for you about it.
9] 5(a) says "Commercial farming practices that may produce
10] PM-10 particulate emissions within the regulated area,
11] including activities of a dairy, a beef cattle feed lot, a
12] poultry facility and a swine facility." I forgot to read
13] above it. "Regulated agricultural activities means", and
14] then it leads into commercial farming practices. It
15] specifically mentions poultry facilities. Is that where
16] the Department found the exemption for hen houses?
17] A. Correct, yeah, when we looked at all the
18] different farm type operations and that is the basis for
19] that; that would be in that definition.
20] Q. The other provision of 49-457 is subsection O
21] which reads as follows: "The regulation of PM-10
22] particulate emissions produced by regulated agricultural
23] activities is a matter of statewide concern. Accordingly,
24] this section preempts further regulation of regulated
25] agricultural activities by a county, city, town or other

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1] political subdivision of this state."
2] Does this not mean the county is expressly
3] prohibited from regulating emissions from hen houses as it
4] is an agricultural activity? Is that your interpretation
5] of that?
6] A. That was my interpretation when I talked about
7] statewide concern earlier, yes.
8] MR. SWAN: We have no further questions.
9] MR. BLACKSON: May I follow up?
10] CHAIRMAN LEONARD: Let's go ahead with your
11] questions and then we'll take a break.
12]
13] EXAMINATION
14] BY MR. BLACKSON:
15] Q. Again, is the Tonopah Egg Ranch physically
16] located in a regulated area?
17] A. No.
18] Q. The regulated activity includes the definition of
19] a regulated area? Let me borrow --
20] MR. SWAN: Mr. Chairman, I am questioning
21] whether these questions have already been asked and
22] answered. I don't know what your recollection is but it
23] seems to me that's the case.
24] CHAIRMAN LEONARD: I don't necessarily
25] disagree, but given the limited number of questions I

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1] think Mr. Blackson has, we're going to go ahead and allow
2] him to ask those questions.
3] BY MR. BLACKSON:
4] Q. The definition of regulated cultural --
5] agricultural activity. In order to perform a regulated
6] agricultural activity, you must be in a regulated area; is
7] that correct? And I will give this back to you.
8] A. Correct, that's the definition of a regulated
9] area, yes.
10] Q. Now, you talked about an exemption from the
11] agricultural process. Are you familiar with, in my
12] pre-hearing disclosure, where the EPA sued California
13] because they exempted animal feeding operations?
14] A. I am familiar with that.
15] Q. Do you believe that could happen here because of
16] the exemption that you're saying exists statewide and
17] countywide for animal feeding operations?
18] A. I believe that could exist here. It would be
19] speculative but by the same token it hasn't so --
20] Q. So --
21] MR. SWAN: It seems to me to be beyond the
22] scope of direct.
23] CHAIRMAN LEONARD: Remember on redirect, Mr.
24] Blackson, it's got to be about questions that you may have
25] already asked or things that you may have learned from Mr.

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1] Swan. So I understand where you're trying to go, but we
2] got to bring it back to where we're at.
3] MR. BLACKSON: One more question.
4] BY MR. BLACKSON:
5] Q. You said that you did not go to the EPA but you
6] went to Indiana. So why would you go to Indiana and not
7] the EPA?
8] A. We -- I think you had said -- I don't know how
9] you define going to Indiana. We just looked at
10] literature. We didn't talk to anyone directly. In the
11] end, we just looked at literature available. We did not
12] speak to anyone directly.
13] Q. And you did not speak to anybody directly at the
14] EPA?
15] A. Yeah, I believe we did.
16] Q. Can you share the conversations?
17] A. Yeah. You know, again, I don't remember the
18] details of it and I don't have any particular notes or
19] anything from that conversation, but we just discussed
20] what -- with the EPA what was going on with that site and,
21] you know, any guidance that they have and they had no
22] guidance for us so --
23] Q. Can you say who you talked to?
24] A. Eugene Shin (phonetic).
25] MR. BLACKSON: We've seen e-mails on that.

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1] Thank you.
2] CHAIRMAN LEONARD: All right. Given the
3] interest of time, we do have some closing discussions
4] potentially as well as then there might be some questions
5] but --
6] MR. BLACKSON: I will be short.
7] CHAIRMAN LEONARD: Mr. Swan?
8] MR. SWAN: I just have a short paragraph.
9] CHAIRMAN LEONARD: All right. Mr. Blackson,
10] if you'd like to go ahead and give your closing.
11] Hold on just a second. I can guarantee that
12] I think we're going to have questions that we'll ask
13] ourselves as we go through, but at this point, we don't
14] have questions for Mr. Blackson or Mr. Swan.
15] So, Mr. Blackson, if you'd go ahead and
16] proceed with your closing and then we'll allow Mr. Swan.
17] MR. BLACKSON: Yes. I'd just like to say
18] that somebody has to decide if the county, Maricopa County
19] Air Quality Department, will be allowed to continue to
20] mischaracterize animal feeding operations as a major
21] source for non-fugitive emissions. I believe you have the
22] authority to stop this arbitrary behavior, and I ask that
23] you decide in our favor. Thank you.
24] CHAIRMAN LEONARD: Thank you.
25] MR. SWAN: The Department has shown that we

1] have a very narrow scope of authority with regard to this
2] type of an action, and Mr. Blackson's appeal is whether or
3] not the director's action in approving the minor permit
4] revision was inappropriate. That's all we're looking at,
5] so it is really very narrow.
6] Our evidence has shown that we properly
7] calculated and characterized the emissions. The decisions
8] we made were not arbitrary. We acted reasonably and
9] lawfully in performing the analysis of the minor permit
10] revision application and the Department's decisions were
11] based upon clear technical judgment.
12] Two other points. Whether other states have
13] chosen to regulate these operations without credible final
14] evidence from the EPA does not mean that we must follow
15] their lead, and the Department's decision to wait for the
16] EPA to issue regulation is evidence of a consistent
17] reasonable analysis. For all of the foregoing reasons,
18] the Board should confirm the director's decision to issue
19] the minor permit modification. Thank you.
20] CHAIRMAN LEONARD: Thank you, gentlemen,
21] very much. I'll conclude this portion of the hearing. I
22] have a sneaking suspicion that the Board is going to need
23] some additional time, so I would propose setting another
24] meeting date to discuss in executive session some of what
25] we've heard together, and hopefully at that same hearing,

1] stating that one of the things this hearing Board is
2] tasked with doing is making sure that the public has an
3] opportunity to understand where we're coming from, both
4] individually and as a Board; if for no other reason, Mr.
5] Blackson has put in a tremendous amount of effort, as well
6] as has the Department. At that point, we will be
7] scheduling another hearing or another meeting date.
8] At this point, our court reporter, you are
9] officially done.
10] (The hearing concluded at 4:55 p.m.)
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1] potentially come out with at least what we believe our
2] decision is. So at this point, I'd like to stop the
3] hearing now. I would like to take a five-minute break and
4] then we'll come back for public comment.
5] So at this point, the court reporter can be
6] done at the conclusion of my statements and, Mr. Blackson
7] and Mr. Swan, your group are free to stay. Obviously,
8] you're free to go but we will coordinate our schedule with
9] your schedules to get that scheduled up.
10] MR. SWAN: Would we be involved -- if it's
11] executive session, would we be involved in your next
12] meeting? It sounds like deliberations without us but I'm
13] asking for clarification.
14] MR. HISER: It's a complex question, Mr.
15] Swan. Under the Arizona open meetings law, while we can
16] discuss in executive session certain aspects and questions
17] that they may have for counsel for guidance, the actual
18] deliberations of the Board are public activity. So the
19] deliberation portion would be open to the public and so
20] that's why we will coordinate to make sure, as a courtesy
21] to the two parties and anybody else who sat through this
22] hearing that would like to hear when that would be.
23] MR. SWAN: Okay. I appreciate the
24] explanation. Thank you.
25] CHAIRMAN LEONARD: Again, it goes without

1] STATE OF ARIZONA) SS.
2] COUNTY OF MARICOPA)
3] BE IT KNOWN that the foregoing proceedings were
4] taken before me; that the witness before testifying was
5] duly sworn by me to testify to the whole truth; that the
6] foregoing pages are a full, true and accurate record of
7] the proceedings, all done to the best of my skill and
8] ability; that the proceedings were taken down by me in
9] shorthand and thereafter reduced to print under my
10] direction.
11] I CERTIFY that I am in no way related to any of
12] the parties hereto nor am I in any way interested in the
13] outcome hereof.
14] [] Review and signature was requested.
15] [] Review and signature was waived.
16] [X] Review and signature not required.
17] I CERTIFY that I have complied with the ethical
18] obligations set forth in ACJA 7-206(F) (3) and ACJA 7-206
19] J(1) (g) (1) and (2).
20] Dated at Phoenix, Arizona, this 22nd day of
21] November, 2016.
22] LAURA A. ASHEROOK, RMR
23] Certified Reporter
24] Arizona CR No. 50360
25] * * *
26] I CERTIFY that GRIFFIN & ASSOCIATES, LLC, has
27] complied with the ethical obligations set forth in ACJA
28] 7-206 (J) (1) (g) (1) through (6).
29] GRIFFIN & ASSOCIATES, LLC
30] Arizona RRF No. R1005

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